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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 944

ROBERT CARTER, ET AL.,
Petitioners,

v.

WEST FELICIANA PARISH SCHOOL BOARD,
Respondent.

SHARON LYNNE GEORGE, ET AL.,
Petitioners,

v.

C. WALTER DAVIS, President, East Feliciana Parish School Board,
Respondent.

IRMA J. SMITH, ET AL.,
Petitioners,

v.

CONCORDIA PARISH SCHOOL BOARD, UNITED STATES OF AMERICA,
Respondents.

MOTION TO ADVANCE, PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND MOTION FOR SUMMARY DISPOSITION

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INDEX

	Page
MOTION TO ADVANCE	1
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT	3
Opinions Below	4
Jurisdiction	4
Question Presented	4
Constitutional Provision Involved	5
Statement	5
Reasons for Granting the Writ	7
I. *The Decision of the Court Below To Postpone Disestablishment of Dual Segregated School Systems Until September, 1970 Conflicts With This Court's Decision in* Alexander v. Holmes County Board of Education	7
II. *The Decision of the Court Below Conflicts With an En Banc Decision of the Fourth Circuit Court of Appeals*	12
Conclusion	16
MOTION FOR SUMMARY DISPOSITION	17

Page

Appendix A Opinion and Order of the Fifth Circuit Court of Appeals in Singleton v. Jackson Municipal Separate School District et al. (December 1, 1969) 1a

Appendix B Opinion and Order of the Fifth Circuit Court of Appeals in Hall v. St. Helena Parish School Board et al. (May 28, 1969) 16a

Appendix C

Part 1 Opinion and Order of the District Court for the Western District of Louisiana in Conley v. Lake Charles School Board et al. (July 8, 1969) 30a

Part 2 Opinion and Order of the District Court for the Western District of Louisiana in Smith v. Concordia Parish School Board (August 1, 1969).. 40a

Appendix D

Part 1 Opinion and Order of the District Court for the Eastern District of Louisiana in Carter v. West Feliciana Parish School Board (July 25, 1969) .. 56a

Part 2 Opinion and Order of the District Court for the Eastern District of Louisiana in George v. Davis, President, East Feliciana Parish School Board (July 25, 1969) 61a

Appendix E Opinion and Order of the Fourth Circuit Court of Appeals in Nesbit v. Statesville City Board of Education et al. (December 2, 1969) 87a

Appendix F Opinion and Order of the Fifth Circuit Court of Appeals in United States v. Hinds County School Board (November 7, 1969) 91a

Appendix G

Part 1 Present Racial Composition of Student Bodies and Faculties of the East Feliciana Parish School System 97a

Part 2 Present Racial Composition of Student Bodies and Faculties of the West Feliciana Parish School System 98a

Part 3 Present Racial Composition of Student Bodies and Faculties of the Concordia Parish School System 99a

TABLE OF AUTHORITIES

CASES: Page

Adams v. *Mathews*, 403 F.2d 181 (5th Cir. 1968) 7, 11

Alexander v. *Holmes County Board of Education*, 90 S.Ct. 29 (1969) ..... 1 *passim*

Conley v. *Lake Charles School Board*, 293 F.Supp. 84 (W.D. La. 1968) 7, 11

Conley v. *Lake Charles School Board*, C.A. No. 9981 (W.D. La. July 8, 1969) 13

Green v. *County School Board of New Kent County*, 391 U.S. 430 (1968) 6

Hall v. *St. Helena Parish School Board*, ___ F.2d ___, Nos. 26450 and 27303 (5th Cir. May 28, 1969) ... 4, 7, 11, 15

Hall v. *St. Helena Parish School Board*, 303 F.Supp. 1224 (E.D. La. 1969) 7, 11

Hall v. *St. Helena Parish School Board*, 303 F.Supp. 1231 (E.D. La. 1969) 5, 12-13

Nesbit v. *Statesville City Board of Education*, ___ F.2d ___, No. 13,229 (4th Cir. December 2, 1969) 13

Singleton v. *Jackson Municipal Separate School District*, ___ F.2d ___, No. 26285 (5th Cir. December 1, 1969) 4, 9

United States v. *Hinds County Board of Education*, ___ F.2d ___, Nos. 28030 and 28042 (5th Cir. November 7, 1969) 8

CONSTITUTIONAL PROVISION:

Constitution of the United States, Fourteenth Amendment 5

OTHER AUTHORITY:

United States Commission on Civil Rights, *Federal Enforcement of School Desegregation* (1969) 11

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MOTION TO ADVANCE

Petitioners, by their undersigned counsel, respectfully move that the Court advance its consideration and disposition of these cases. They present issues of national importance about which different United States Courts of Appeals have recently divided in their interpretation of *Alexander* v. *Holmes County Board of*

Education, decided by this Court on October 29, 1969.* These issues require prompt resolution by this Court for the reasons stated in the annexed petition for a writ of certiorari, and in the annexed motion for summary disposition.

WHEREFORE, Petitioners pray that the Court:

1. Consider this motion immediately;

2. Shorten the time for filing respondents' response to the annexed petition and motion to seven days; and

3. Consider the annexed petition and motion as soon after receipt of responses as possible.

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* U.S. , 90 S. Ct. 29.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in these cases on December 1, 1969.

OPINIONS BELOW

The opinion and order of the United States Court of Appeals for the Fifth Circuit of which review is sought is unreported and is reproduced in Appendix A.[1] The orders of the United States District Court for the Western District of Louisiana and of the United States District Court for the Eastern District of Louisiana which were reviewed in the court of appeals in these three cases are unreported and are set forth in Appendices C and D. The opinion and order of the court of Appeals, in *Hall* v. *St. Helena Parish School Board*, pursuant to which these district court orders were entered, is unreported and is set forth in Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The judgment of the court of appeals was entered on December 1, 1969.

QUESTION PRESENTED

In light of the decision of this Court in *Alexander* v. *Holmes County Board of Education*,[2] did the court of appeals err in authorizing segregated student enrollment in these cases until September, 1970, where there are of record unitary desegregation plans, developed by the Office of Education of the Department of Health, Education and Welfare?

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[1] *Singleton* v. *Jackson Municipal Separate School District*, F. 2d , No. 26285 (December 1, 1969) (hereinafter *Singleton*). This opinion, reprinted beginning at 1a, decided a total of sixteen school desegregation cases in six states, including the three cases brought here by this petition. The cases were consolidated below for argument and decision.

[2] U.S. , 90 S. Ct. 29 (October 28, 1969) (hereinafter *Alexander*).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

These three Louisiana school desegregation cases were filed in 1965. Today, the systems remain almost totally segregated as to both student and faculty assignments.[3] Pursuant to orders of the district courts,[4] the Office of Education of the Department of Health, Education and Welfare, in July of this year, submitted plans for the complete disestablishment of these dual

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[3] Of ten schools in the East Feliciana Parish school system, six traditionally all-black schools remain all-black and enroll over ninety-six percent of the parish's black students. Less than four percent of the black students attend the five traditionally white schools. Of eighty-two white teachers in the system, only eight teach in black schools; four of the 101 black teachers are in predominantly white schools. See Appendix G, part I.

The West Feliciana Parish school system has five schools. Ninety-one percent of the system's 1,699 black students attend three all-black schools. Four of the eighty-four black teachers in the system are employed in the two predominantly white schools; only one white teacher is assigned to an all-black school. See Appendix G, part II.

The Concordia Parish school system is comprised of thirteen schools, four of which are all-black. Eighty-one percent of the system's black students attend these four schools. Of the 191 white teachers in the system, twenty-two teach in the black schools and thirty-eight of the 151 black teachers are employed in predominantly white schools. See Appendix G, part III.

[4] See *Hall* v. *St. Helena Parish School Board et al*, 303 F. Supp. 1231 (E.D. La. June 9, 1969). The order in the Western District of Louisiana school cases calling for HEW participation in the formulation of plans is not reported, but appears in the Record at

systems at the beginning of the 1969-70 school year.[5] While recognizing that the HEW plans provided for unitary school systems, the district courts adopted instead school board plans which scarcely affected the numbers of black students attending formerly white schools and did nothing about the racial isolation of the all-black schools in these parishes.[6]

Petitioners appealed these district court orders to the United States Court of Appeals for the Fifth Circuit. On December 1, 1969, the court of appeals, sitting *en banc,* reversed, but failed to order implementation of the HEW plans, or any other plans for the disestablishment of the dual systems of student assignment, until September, 1970.[7] The court of ap-

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[5] HEW proposed that predominantly white and all-black schools in all three parishes be "paired" so that all students in each grade level in a given attendance area would attend a single school. Attendance zones were proposed for several geographically remote schools in Concordia and West Feliciana. Petitioners have filed ten copies of the HEW plans for each of the three cases with the Clerk of this Court.

[6] The plans adopted by the district courts provided for the enrollment of over eighty-five percent of the students in the systems by freedom of choice. The exceptions to freedom of choice were that, in Concordia, some black students were transferred into white schools; in East and West Feliciana, mandatory attendance zones for several rural elementary schools were established. These zones failed to result in integration of any all-black school. See Appendices C-2, D-1, D-2, G-1, G-2.

[7] The petitioners have been seeking implementation of this Court's decision in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), since June 1968. At that time, petitioners moved in the district courts for the implementation of unitary plans, in lieu of freedom of choice, at the beginning of the 1968-69 school year. The district courts declined to rule on these motions prior to the opening of school in September 1968. Relief for the 1968-69 school year was denied by the court of appeals, but the district courts were ordered to adopt unitary plans to

peals ordered that new plans for student desegregation be submitted to the district courts on January 6, 1970. At the same time, the court ordered that all steps necessary to convert to unitary systems, other than the reassignment of students, be completed by February 1, 1970. Petitioners here seek review of the decision of the court of appeals authorizing a further substantial delay in pupil desegregation. Specifically, petitioners seek the implementation of the HEW plans for student assignment simultaneously with the other steps ordered by the court of appeals on February 1, 1970.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Court Below To Postpone Disestablishment of Dual Segregated School Systems Until September, 1970, Conflicts With This Court's Decision in Alexander v. Holmes County Board of Education

In *Alexander,* this Court reversed the Fifth Circuit's approval of two-step desegregation plans which delayed until the fall of 1970 the complete conversion of thirty Mississippi school districts into unitary systems. This

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replace freedom of choice for the 1969-70 school year. *Adams* v. *Mathews*, 403 F. 2d 181 (5th Cir. 1968). In November and December 1968, the two district courts denied petitioners' motions for supplemental relief, despite *Green* and *Adams* v. *Mathews*, and permitted the school boards to retain freedom of choice plans. *Conley* v. *Lake Charles School Board, et al.*, 293 F. Supp. 84 (W.D. La. 1968); *Hall* v. *St. Helena Parish School Board, et al.*, 303 F. Supp. 1224 (E.D. La. 1969). These decisions were reversed by the Fifth Circuit in *Hall* v. *St. Helena Parish School Board, et al.*, Nos. 27303 and 26450 (May 28, 1969), *cert. denied*, 38 U.S.L. Week 3133 (Nov. 10, 1969), reprinted in Appendix B. In *Hall*, the court of appeals remanded with instructions that new plans, providing for unitary, non-racial school systems, be adopted for implementation at the commencement of the 1969-70 school year. The refusal of the district courts to comply with that mandate resulted in the decision of the court of appeals from which review is here sought.

Court explicitly held, in terms as terse and precise as the English language permits, that the conversion to unitary systems was to be accomplished not in the fall of 1970, but "at once".[8]

The court of appeals' opinion in these cases explicitly recognizes the controlling effect of *Alexander*.[9] But, in reaching its decision, the lower court departed from both *Alexander*, and its own decision on remand of the *Alexander* cases,[10] by mandating two-step plans which delay conversion to unitary systems until September 1970:

> The Court has concluded that two-step plans are to be implemented. One step must be accomplished not later than February 1, 1970 and it will include all steps necessary to conversion to a unitary sys-

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[8] *Alexander*, 90 S. Ct. at 29.

[9] "The rule of [*Alexander*] is to be found in the direction to this court to issue its order 'effective immediately declaring that each of the school districts . . . may no longer operate a dual school system based on race or color, and directing that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color.' We effectuated this rule and order in *United States* v. *Hinds County School Board*, 5 Cir., 1969, — F. 2d —, [Nos. 28,030 and 28,042, slip opinion dated Nov. 7, 1969]. It must likewise be effectuated in these and all other school cases now being or which are to be considered in this or the district courts of this circuit."

Singleton, slip opinion at 8; Appendix A, *infra*, at 2a.

[10] *United States* v. *Hinds County School Board, et al.*, Nos. 28030 and 28042, November 7, 1969. This opinion and order is reprinted herein as Appendix F at 91a. The *Alexander* decision was interpreted by the court of appeals to require desegregation by December 31, not only in the fourteen cases before this Court, but also in sixteen other school desegregation cases in the Southern District of Mississippi that were part of the Fifth Circuit proceedings reviewed by this Court in *Alexander*.

> tem save the merger of student bodies into unitary systems. The student body merger will constitute the second step and must be accomplished not later than the beginning of the Fall Term, 1970.[11]

Why? The court's sole explanation was that:

> [I]t will be difficult to arrange the merger of student bodies into unitary systems prior to the Fall 1970 Term in the absence of merger plans.[12]

But in each of these three cases, there *are* unitary plans in the record that were prepared and submitted to the district courts in July of this year by the Office of Education of the Department of Health, Education and Welfare—the identical situation as that which existed in the *Alexander* cases.[13]

The court below discounted these plans because none were "submitted in light of the precedent of *Alexander* v. *Holmes County*".[14] Neither, of course, were the plans that were implemented in the *Alexander* cases. The point is not whether the plans were submitted before or after this Court's decision in *Alexander,* but whether

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[11] *Singleton,* slip opinion at 10; Appendix A, *infra,* at 4a.

[12] *Id.*

[13] In other cases decided in the same opinion by the court below there are not such plans in the record. But petitioners do not mean to suggest that *Alexander* relief should be available only where there are preexisting plans for unitary systems. The court below ordered that unitary plans in all sixteen cases be filed with the district courts no later than January 6, 1970. Since there will then be unitary plans in all of the cases, there is no reason why these plans should not be implemented on February 1, 1970.

[14] *Singleton,* slip opinion at 9; Appendix A, *infra,* at 3a.

they provide for prompt and effective conversion to unitary school systems. There is no dispute about the efficacy of the plans to disestablish the dual systems in these districts.[15]

Although the court of appeals paid lip service to the principle of *pendente lite* relief adopted by this Court in *Alexander*,[16] it failed to heed this mandate, and delayed conversion until September, 1970, after a new round of plans are submitted, litigated, and appealed. Thus, once again, segregation will be the status quo pending further litigation.

In shaping its order for the *Alexander* districts, the court below allowed seven weeks for conversion to unitary systems. The decision of the court to allow nine months for conversion in these cases constitutes a reincarnation of the deliberate speed doctrine which

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[15] Indeed, although it does not seem to be relevant under this Court's decision in *Alexander*, petitioners note that these three districts involve simple school systems, each with thirteen schools or less, and less than 7,000 students. The HEW plans involve the simple combination of closing, pairing and zoning schools.

It is plain that these school districts are a good deal less complicated than several of the districts that were involved in this Court's *Alexander* and the lower court's *Hinds County* orders. See *infra* at 92a.

[16] "The Tenor of the decision in *Alexander* v. *Holmes County* is to shift the burden from the standpoint of time for converting to unitary school systems. The shift is from a status of litigation to one of unitary operation pending litigation. The new modus operandi is to require immediate operation as unitary systems. Hearings on requested changes in unitary operating plans may be in order but no delay in conversion may ensue because of the need for modification or hearing."

Singleton, slip opinion at 8; Appendix A, *infra*, at 2a-3a.

this Court in *Alexander* held is no longer constitutionally permissible.[17]

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[17] *Alexander*, 90 S. Ct. at 29.

In other respects, the decision of the court below is in conflict with *Alexander*. In *Alexander*, this Court took the extraordinary step of providing that plans for the disestablishment of the dual system, once adopted, could be amended only by the court of appeals. Although this Court did not so state, it is apparent that the reason for this action was the history of intransigence by the district court involved. As petitioners argued to the court of appeals in these cases, the history is identical here.

After this Court's decision in *Green*, the district courts here first refused to consider motions for supplemental relief prior to the beginning of the 1968-69 school year. See *Adams* v. *Mathews*, 403 F. 2d at 188. They then, despite a court of appeals instruction to abandon freedom of choice plans in cases such as these, where they had not been effective to eliminate all-black schools, see *Adams*, 403 F. 2d at 188, 189, upheld the continued use of freedom of choice. *Conley* v. *Lake Charles School Board, et al., supra*, note 7; *Hall* v. *St. Helena Parish School Board, et al., supra*, note 7.

The court of appeals reversed these decisions in *Hall* v. *St. Helena Parish School Board, supra* note 7, and again instructed the district courts to adopt plans, in lieu of freedom of choice, that would accomplish a unitary system in time for the opening of the 1969-70 school year.

The plans adopted by the district courts did not even purport to achieve this result. See note 3, *supra*, Appendix G, *infra*. In adopting the plan for the West Feliciana Parish school system, Judge West commented that this plan "will not, for the school year 1969-1970, bring about the degree of mixing of the races in the schools of West Feliciana Parish obviously contemplated by the Court of Appeals . . ." Appendix D, Part 1, *infra* at 56a.

The United States Commission on Civil Rights recently examined the handling of school desegregation cases by several Federal district judges, including both district judges who have handled the cases here involved, and concluded:

> A small minority of Federal judges, however, have indicated by their past judicial actions that they will not, where school desegregation or other civil rights cases are concerned, discharge their responsibilities impartially.

U. S. Commission on Civil Rights, *Federal Enforcement of School Desegregation* (1969) at 40. The Commission went on to say

II. The Decision of the Court Below Conflicts With an En Banc Decision of the Fourth Circuit Court of Appeals

On December 2, 1969, the day after the decision of the court below in these cases, the Court of Appeals for the Fourth Circuit, sitting *en banc,* unanimously arrived at an interpretation of this Court's decision in *Alexander* which conflicts squarely with the inter-

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that "a number of Southern Federal judges have demonstrated a pro-segregation bias" that, for most, "has led to . . . judicial abdications of duty . . . ." The examples from the Eastern and Western Districts of Louisiana cited by the Report indicate a lack of sympathy to the need for prompt relief in school desegregation. *Id.* at 41-43.

In an opinion issued after the May 28, 1969 remand in *Hall,* Judge West stated, *inter alia:*

> I have, in prior decisions concerning these cases [stated] . . . that any order such as the one the Court of Appeals now mandates me to issue is contrary to law, purely and simply. I reiterate that this is still my belief.
>
> • • •
>
> There is no requirement in the law, as embodied in the Constitution of the United States or as enacted by Congress, save for the court-made law of this Circuit, that there be no all-white schools or no all-negro schools.
>
> • • •
>
> The constitutional rights of all pupils must be protected and they are indeed protected in the best possible way by . . . [a]n honest, unfettered freedom of choice [which] protects the rights of all pupils regardless of the resultant makeup of the student bodies involved.
>
> • • •
>
> The decree which I have been ordered to enter in these cases will be entered only because of the mandate directed to me by the Fifth Circuit Court of Appeals. I fervently hope, however, that the school boards involved will seek redress from these orders from both the Congress and the Supreme Court of the United States. . . . The issue is simply whether or not the Federal Courts, by judicial decree, shall be allowed to continue to substitute their version of what they think the

pretation of the court below. In *Nesbit* v. *Statesville City Board of Education, et al.*,[18] the Fourth Circuit ordered school districts to submit unitary plans

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law ought to be for what the legislative branch of the Government has decreed it to be."

Hall v. *St. Helena Parish School Board, supra* n. 4, 303 F. Supp. at 1234-1235.

In an opinion issued by Judge Dawkins in the Western District of Louisiana cases on July 8, 1969, he stated:

> We have not yet seen in writing the specific plans to be submitted by the school boards and HEW. At this moment, all we know is what we have seen or heard in the press, TV, or radio, which is quite fragmentary.
>
> Nevertheless, from what we thus have observed, it would appear strongly at first blush that, educationally, what HEW has proposed to the various boards is either "outrageous, utterly unrealistic or totally impossible economically." And if this indeed is the case, you may rest assured that we judges will not—the words are WILL NOT—accept or approve them.

Appendix C, Part 1, *infra* at 37a.

In that opinion, Judge Dawkins also praised Rep. Joe D. Waggonner of the Fourth Congressional District of Louisiana, for using his influence with the executive branch to obtain a relaxation of school desegregation guidelines. Commenting on that relaxation—the July 3, 1969 joint statement of the Attorney General and of the Secretary of Health, Education, and Welfare—Judge Dawkins stated:

> "All of us—black and white alike—owe a debt of eternal gratitude . . . to the untiring efforts of many, many good people of all political ties who have worked tirelessly behind the scenes to bring this about."

Id. at 32a. The complete opinion is reprinted in Appendix C, beginning at 30a.

The petitioners suggest that, in light of this background, the failure of the court of appeals to retain jurisdiction over these cases is in further conflict with the *Alexander* decision.

[18] No. 13,229 (December 2, 1969) (hereinafter *Nesbit*). This opinion and order is reprinted herein as Appendix E, *infra*, at 87a.

by December 8, 1969 for complete implementation no later than January 31, 1970.

> The clear mandate of the [Supreme] Court is immediacy. Further delays will not be tolerated in this circuit.[19]

There is a clear conflict between the decisions of the Fourth Circuit and the Fifth Circuit. Where the Fifth Circuit allowed additional months for the relitigation of unitary desegregation plans—even in cases such as these in which there were already unitary HEW plans in the record—and allowed nine months for their implementation, the Fourth Circuit ordered that unitary plans be developed in six days and implemented "no later than January 31, 1970."[20]

This Court generally treats conflicting decisions of Federal courts of appeals as a consideration in favor of the issuance of a writ of certiorari.[21] Here, this consideration is far stronger than is customarily the case, rising to the level of necessity for review in this Court. What confronts the Court is not a conflict on some point of law which is of relatively little immediate or practical concern to the communities involved, but a conflict concerning the requirements, as to time, of a judicially mandated social, educational and psy-

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[19] *Nesbit*, slip opinion at 2; Appendix E, *infra*, at 87a.

[20] *Id.*, slip opinion at 5; Appendix E, *infra*, at 89a.

Following *Alexander*, the Fourth Circuit in *Nesbit* also ruled that amendments to unitary desegregation plans would not become effective until approved by the court of appeals. The Fifth Circuit in *Singleton* failed to adopt such a provision in the face of a far greater record of resistance in the district courts. See note 17, *supra*.

[21] See Rule 19(1)(b) of the Rules of this Court.

chological upheaval of major proportions in Southern school districts. In school districts in which dual systems are still maintained, it is fair to say that the question of when the dual segregated systems will be abolished is the foremost public question on the minds of black and white parents and students.[22] Disestablishment of these systems, when disestablishment comes, will require substantial and sometimes painful readjustments. There have been threats of violence and resistance. It is obvious that these problems are exacerbated when neighboring school districts, on identical facts, are granted additional delay.

There is not a single reason why these cases should not be treated in the same way as the cases before the Fourth Circuit in *Nesbit* or as the thirty cases from the Southern District of Mississippi covered by the lower court's *Hinds County* order on the the remand of *Alexander*.[23] In view of the stakes involved, this Court can not allow different treatment to go uncorrected.

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[22] Although only three school districts are involved in this petition, many more districts will, of course, be affected by its disposition. On remand from the Fifth Circuit's decision in *Hall* v. *St. Helena Parish School Board* (Appendix B, *infra*, p. 16a), unitary desegregation plans were prepared bw HEW's Office of Education for thirty-three Louisiana school districts. With very few exceptions, these plans were not adopted and dual systems remain. Many of these cases are pending before the Court of Appeals. In addition, thirteen other cases directly governed by the lower court's opinion in these cases and many other cases in the Fifth Circuit will undoubtedly be governed by the court's approval of further delay.

[23] See note 10, *supra*.

CONCLUSION

Petitioners respectfully pray that a writ of certiorari be granted.

Respectfully submitted,

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MOTION FOR SUMMARY DISPOSITION

Petitioners, through undersigned counsel, respectfully move that, following a grant of a writ of certiorari, this Court:

(1) Summarily reverse the decision of the court below and direct that court to order the implementation of the existing HEW plans by February 1, 1970; or

(2) Treat petitioners' petition for certiorari and the responses filed thereto as briefs on the merits, and set the matter for oral argument at the earliest opportunity so that a decision may be rendered in time for the implementation of complete unitary plans by February 1, 1970.

The issue before this Court is solely whether the decision of the court below, postponing desegregation until September of 1970, can be reconciled with the decision of this Court in *Alexander* v. *Holmes County School Board*.* Because the current school year will soon be half over, the question will become moot if it is not decided expeditiously. A meaningful decision can not be rendered under a normal schedule for briefing and argument.

The court of appeals has set February 1, 1970 as the deadline for the desegregation of faculties and other facilities in these systems. This date corresponds closely with the beginning of the second semester of the current school year. As that court recognized,** these changes will themselves require students to discontinue with teachers with whom they had been scheduled to study for the full year. If there are to be student reassignments this school year, plainly they should be accomplished simultaneously with the other

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* U.S. , 90 S. Ct. 29 (Oct. 29, 1969).

** *Singleton* v. *Jackson Municipal Separate School District*, No. 26285 (December 1, 1969), slip opinion at 10, note 1; Appendix A, *infra*, at 4a, note 1.

required changes. This can be effected only if this matter is given summary disposition.

Respectfully submitted,

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APPENDIX



APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 26285

DEREK JEROME SINGLETON, ET AL.,
Appellants,

versus

JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi

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And 15 Companion Cases, Including
Carter v. West Feliciana Parish School Board
George v. Davis, President, East Feliciana Parish School Board
Smith v. Concordia Parish School Board

(December 1, 1969)

Before BROWN, Chief Judge, WISDOM, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CARSWELL, and CLARK, Circuit Judges, EN BANC.*

PER CURIAM: These appeals, all involving school desegregation orders, are consolidated for opinion purposes. They involve, in the main, common questions of law and fact. They were heard en banc on successive days.

Following our determination to consider these cases en banc, the Supreme Court handed down its decision in *Alexander v. Holmes County Board of Education*, 1969, ___ U.S. ___, 90 S.Ct. ___, 24 L.Ed.2d 19. That decision supervened all existing authority to the contrary. It sent the doctrine of deliberate speed to its final resting place. 24 L.Ed.2d at p. 21.

The rule of the case is to be found in the direction to this court to issue its order "effective immediately declaring that each of the school districts . . . may no longer operate a dual school system based on race or color, and directing that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color." We effectuated this rule and order in *United States v. Hinds County School Board*, 5 Cir., 1969, ___ F.2d ___, [Nos. 28,030 and 28,042, slip opinion dated Nov. 7, 1969]. It must likewise be effectuated in these and all other school cases now being or which are to be considered in this or the district courts of this circuit.

The tenor of the decision in *Alexander* v. *Holmes County* is to shift the burden from the standpoint of time for converting to unitary school systems. The shift is from a status of litigation to one of unitary operation pending litigation. The new modus operandi is to require immediate

*Judge Wisdom did not participate in Nos. 26285, 28261, 28045, 28350, 28349 and 28361. Judge Ainsworth did not participate in No. 28342. Judge Carswell did not participate in Nos. 28763 and 27983. Judge Clark did not participate in No. 26285.

operation as unitary systems. Suggested modifications to unitary plans are not to delay implementation. Hearings on requested changes in unitary operating plans may be in order but no delay in conversion may ensue because of the need for modification or hearing.

In *Alexander v. Holmes County,* the court had unitary plans available for each of the school districts. In addition, this court, on remand, gave each district a limited time within which to offer its own plan. It was apparent there, as it is here, that converting to a unitary system involved basically the merger of faculty and staff, students, transportation, services, athletic and other extra-curricular school activities. We required that the conversion to unitary systems in those districts take place not later than December 31, 1969. It was the earliest feasible date in the view of the court. *United States v. Hinds County,* supra. In three of the systems there (Hinds County, Holmes County and Meridian), because of particular logistical difficulties, the Office of Education (HEW) had recommended two step plans. The result was, and the court ordered, that the first step be implemented not later than December 31, 1969 and the other beginning with the fall 1970 school term.

Because of *Alexander v. Holmes County,* each of the cases here, as will be later discussed, must be considered anew, either in whole or in part, by the district courts. It happens that there are extant unitary plans for some of the school districts here, either Office of Education or school board originated. Some are operating under freedom of choice plans. In no one of the districts has a plan been submitted in light of the precedent of *Alexander v. Holmes County.* That case resolves all questions except as to mechanics. The school districts here may no longer operate dual systems and must begin immediately to operate as unitary systems. The focus of the mechanics question is on the accomplishment of the immediacy requirement laid down in *Alexander v. Holmes County.*

Despite the absence of plans, it will be possible to merge faculties and staff, transportation, services, athletics and other extra-curricular activities during the present school term. It will be difficult to arrange the merger of student bodies into unitary systems prior to the fall 1970 term in the absence of merger plans. The court has concluded that two-step plans are to be implemented. One step must be accomplished not later than February 1, 1970 and it will include all steps necessary to conversion to a unitary system save the merger of student bodies into unitary systems. The student body merger will constitute the second step and must be accomplished not later than the beginning of the fall term 1970.[1] The district courts, in the respective cases here, are directed to so order and to give first priority to effectuating this requirement.

To this end, the district courts are directed to require the respective school districts, appellees herein, to request the Office of Education (HEW) to prepare plans for the merger of the student bodies into unitary systems. These plans shall be filed with the district courts not later than January 6, 1970 together with such additional plan or modification of the Office of Education plan as the school district may wish to offer. The district court shall enter its final order not later than February 1, 1970 requiring and setting out the details of a plan designed to accomplish a unitary system of pupil attendance with the start of the fall 1970

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[1] Many faculty and staff members will be transferred under step one. It will be necessary for final grades to be entered and for other records to be completed, prior to the transfers, by the transferring faculty members and administrators, for the partial school year involved. The interim period prior to February 1, 1970 is allowed for this purpose.

The interim period prior to the start of the fall 1970 school term is allowed for arranging the student transfers. Many students must transfer. Buildings will be put to new use. In some instances it may be necessary to transfer equipment, supplies or libraries. School bus routes must be reconstituted. The period allowed is at least adequate for the orderly accomplishment of the task.

school term. Such order may include a plan designed by the district court in the absence of the submission of an otherwise satisfactory plan. A copy of such plan as is approved shall be filed by the clerk of the district court with the clerk of this court.[2]

The following provisions are being required as step one in the conversion process. The district courts are directed to make them a part of the orders to be entered and to also give first priority to implementation.

> The respective school districts, appellees herein, must take the following action not later than February 1, 1970:
>
> *DESEGREGATION OF FACULTY AND OTHER STAFF*
>
> The School Board shall announce and implement the following policies:
>
> 1. Effective not later than February 1, 1970, the principals, teachers, teacher aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the

[2] In formulating plans, nothing herein is intended to prevent the respective school districts or the district court from seeking the counsel and assistance of state departments of education, university schools of education or of others having expertise in the field of education.

It is also to be noted that many problems of a local nature are likely to arise in converting to and maintaining unitary systems. These problems may best be resolved on the community level. The district courts should suggest the advisability of biracial advisory committees to school boards in those districts having no Negro school board members.

ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

The school district shall, to the extent necessary to carry out this desegregation plan, direct members of its staff as a condition of continued employment to accept new assignments.

2. Staff members who work directly with children, and professional staff who work on the administrative level will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color, or national origin.

3. If there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district. In addition if there is any such dismissal or demotion, no staff vacancy may be filled through recruitment of a person of a race, color, or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so.

Prior to such a reduction, the school board will develop or require the development of non racial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. These criteria shall be available for public inspection and shall be retained by the school district. The school district also shall record and preserve the evaluation of staff members under the criteria.

Such evaluation shall be made available upon request to the dismissed or demoted employee.

"Demotion" as used above includes any reassignment (1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he held previously, or (3) under which the staff member is asked to teach a subject or grade other than one for which he is certified or for which he has had substantial experience within a reasonably current period. In general and depending upon the subject matter involved, five years is such a reasonable period.

MAJORITY TO MINORITY TRANSFER POLICY

The school district shall permit a student attending a school in which his race is in the majority to choose to attend another school, where space is available, and where his race is in the minority.

TRANSPORTATION

The transportation system, in those school districts having transportation systems, shall be completely re-examined regularly by the superintendent, his staff, and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis.

SCHOOL CONSTRUCTION AND SITE SELECTION

All school construction, school consolidation, and site selection (including the location of any temporary classrooms) in the system shall be done in a

manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

ATTENDANCE OUTSIDE SYSTEM OF RESIDENCE

If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system.

See *United States* v. *Hinds County*, supra, decided November 6, [sic] 1969. The orders there embrace these same requirements.

II

In addition to the foregoing requirements of general applicability, the order of the court which is peculiar to each of the specific cases being considered is as follows:

NO. 26285 — JACKSON, MISSISSIPPI

This is a freedom of choice system. The issue presented has to do with school building construction. We enjoined the proposed construction pending appeal.

A federal appellate court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. *Bell* v. *State of Maryland*, 378 U.S. 226, 84 S.Ct. 1814, 12 L.Ed.2d 822 (1964). We therefore reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order. Our order enjoining the proposed construction pending appeal is continued in effect

until such time as the district court has approved a plan for conversion to a unitary school system.

NO. 28261 — MARSHALL COUNTY AND HOLLY SPRINGS, MISSISSIPPI

This suit seeks to desegregate two school districts, Marshall County and Holly Springs, Mississippi. The district court approved plans which would assign students to schools on the basis of achievement test scores. We pretermit a discussion of the validity per se of a plan based on testing except to hold that testing cannot be employed in any event until unitary school systems have been established.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28045 — UNITED STATES V. MATTHEWS (LONGVIEW, TEXAS)

This system is operating under a plan approved by the district court which appears to be realistic and workable except that it is to be implemented over a period of five years. This is inadequate.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28330 — JEFFERSON COUNTY AND BESSEMER, ALABAMA

These consolidated cases involve the school boards of Jefferson County and the City of Bessemer, Alabama. Prior plans for desegregation of the two systems were disapproved by this court on June 26, 1969; *United States of America* v. *Jefferson County Board of Education, et al.*, ——F.2d —— (5th Cir. 1969) [No. 27444, June 26, 1969], at which time we reversed and remanded the case with specific directions. The record does not reflect any substantial

change in the two systems since this earlier opinion, and it is therefore unnecessary to restate the facts. The plans approved by the district court and now under review in this court do not comply with the standards required in *Alexander* v. *Holmes County*.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28349 — MOBILE COUNTY, ALABAMA

On June 3, 1969, we held that the attendance zone and freedom of choice method of student assignment used by the Mobile School Commissioners was constitutionally unacceptable. Pursuant to our mandate the district court requested the Office of Education (HEW) to collaborate with the board in the preparation of a plan to fully desegregate all public schools in Mobile County. Having failed to reach agreement with the board, the Office of Education filed its plan which the district court on August 1, 1969, adopted with slight modification (but which did not reduce the amount of desegregation which will result). The court's order directs the board for the 1969-1970 school year to close two rural schools, establish attendance zones for the 25 other rural schools, make assignments based on those zones, restructure the Hillsdale School, assign all students in the western portion of the metropolitan area according to geographic attendance zones designed to desegregate all the schools in that part of the system, and reassign approximately 1,000 teachers and staff. Thus the district court's order of August 1, now before us on appeal by the plaintiffs, will fully desegregate all of Mobile County schools except the schools in the eastern portion of metropolitan Mobile where it was proposed by the plan to transport students to the western part of the city. The district court was not satisfied with this latter provision and required the board after further study and collaboration with HEW officials, to submit by December 1, 1969, a plan for the

desegregation of the schools in the eastern part of the metropolitan area.

The school board urges reversal of the district court's order dealing with the grade organization of the Hillsdale School and the faculty provisions.

We affirm the order of the district court with directions to desegregate the eastern part of the metropolitan area of the Mobile County School System and to otherwise create a unitary system in compliance with the requirements of *Holmes County* and in accordance with the other provisions and conditions of this order.

NO. 28340 — EAST AND WEST FELICIANA PARISHES, LOUISIANA

East Feliciana is operating under a plan which closed one rural Negro elementary school and zoned the four remaining rural elementary schools. All elementary students not encompassed in the rural zones, and all high school students, continue to have free choice. Majority to minority transfer is allowed on a space-available basis prior to beginning of the school year.

The plan has not produced a unitary system. We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

West Feliciana is operating under a plan approved for 1969-70 which zones the two rural elementary schools. These schools enroll approximately 15 per cent of the students of the district. The plan retains "open enrollment" (a euphemism for free choice) for the other schools. The plan asserts that race should not be a criterion for employment or assignment of personnel. However, the board promises to seek voluntary transfers and if substantial compliance cannot be obtained by this method it proposes to adopt other means to accomplish substantial results.

This plan has not produced a unitary system. We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28342 — CONCORDIA PARISH, LOUISIANA

The plan in effect for desegregating this school district has not produced a unitary system. It involves zoning, pairing, freedom of choice and some separation by sex. We pretermit the question posed as to sex separation since it may not arise under such plan as may be approved for a unitary system.

This plan has not produced a unitary system. We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28361 — ST. JOHN THE BAPTIST PARISH, LOUISIANA

This school district has been operating under a freedom of choice plan. The parish is divided into two sections by the Mississippi River and no bridge is located in the parish. The schools are situated near the east and west banks of the river.

A realistic start has been made in converting the east bank schools to a unitary system. It, however, is less than adequate. As to the west bank schools, the present enrollment is 1626 Negro and 156 whites. The whites, under freedom of choice, all attend the same school, one of five schools on the west bank. The 156 whites are in a school with 406 Negroes. We affirm as to this part of the plan. We do not believe it necessary to divide this small number of whites, already in a desegregated minority position, amongst the five schools.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

No. 28409 — BURKE COUNTY, GEORGIA

The interim plan in operation here, developed by the Office of Education (HEW), has not produced a unitary system. The district court ordered preparation of a final plan for use in 1970-71. This delay is no longer permissible.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28407 — BIBB COUNTY, GEORGIA

This is a freedom of choice system on which a special course transfer provision has been superimposed. Special courses offered in all-Negro schools are being attended by whites in substantial numbers. This has resulted in some attendance on a part time basis by whites in every all-Negro school. Some three hundred whites are on the waiting list for one of the special courses, remedial reading. The racial cross-over by faculty in the system is 27 per cent.

The order appealed from continues the existing plan with certain modifications. It continues and expands the elective course programs in all-Negro schools in an effort to encourage voluntary integration. The plan calls for a limitation of freedom of choice with respect to four schools about to become resegregated. Under the present plan the school board is empowered to limit Negro enrollment to 40 per cent at these schools to avoid resegregation. Earlier a panel of this court affirmed the district court's denial of an injunction against the quota provision of this plan pending hearing en banc. The prayer for injunction against continuation of the quota provision is now denied and the provision may be retained by the district court pending further consideration as a part of carrying out the requirements of this order.

It is sufficient to say that the district court here has employed bold and imaginative innovations in its plan which have already resulted in substantial desegregation which approaches a unitary system. We reverse and remand for

compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 28408 — HOUSTON COUNTY, GEORGIA

This system is operating under a freedom of choice plan. Appellants seek zoning and pairing. There is also an issue as to restricting transfers by Negroes to formerly all-white schools. Cf. No. 28407 — Bibb County, supra. In addition, appellants object to the conversion of an all-Negro school into an integrated adult education center. As in the Bibb County case, these are all questions for consideration on remand within the scope of such unitary plan as may be approved.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 27863 — BAY COUNTY, FLORIDA

This system is operating on a freedom of choice plan. The plan has produced impressive results but they fall short of establishing a unitary school system.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

NO. 27983 — ALACHUA COUNTY, FLORIDA

This is another Florida school district where impressive progress has been made under a freedom of choice plan. The plan has been implemented by zoning in the elementary schools in Gainesville (the principal city in the system) for the current school year. The results to date and the building plan in progress should facilitate the conversion to a unitary system.

We reverse and remand for compliance with the requirements of *Alexander* v. *Holmes County* and the other provisions and conditions of this order.

III

In the event of an appeal or appeals to this court from an order entered as aforesaid in the district courts, such appeal shall be on the original record and the parties are encouraged to appeal on an agreed statement as is provided for in Rule 10(d), Federal Rules of Appellate Procedure (FRAP). Pursuant to Rule 2, FRAP, the provisions of Rule 4(a) as to the time for filing notice of appeal are suspended and it is ordered that any notice of appeal be filed within fifteen days of the date of entry of the order appealed from and notices of cross-appeal within five days thereafter. The provisions of Rule 11 are suspended and it is ordered that the record be transmitted to this court within fifteen days after filing of the notice of appeal. The provisions of Rule 31 are suspended to the extent that the brief of the appellant shall be filed within fifteen days after the date on which the record is filed and the brief of the appellee shall be filed within ten days after the date on which the brief of appellant is filed. No reply brief shall be filed except upon order of the court. The times set herein may be enlarged by the court upon good cause shown.

The mandate in each of the within matters shall issue forthwith. No stay will be granted pending petition for rehearing or application for certiorari.

REVERSED as to all save Mobile and St. John The Baptist Parish; AFFIRMED as to Mobile with direction; AFFIRMED in part and REVERSED in part as to St. John The Baptist Parish; REMANDED to the district courts for further proceedings consistent herewith.

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Nos. 26450 and 27303

LAWRENCE HALL, ET AL.,
Plaintiffs-Appellants,

UNITED STATES OF AMERICA,
Intervenor-Appellant,

versus

ST. HELENA PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees.

(Civil Action No. 1068)

And 37 Companion Cases, Including
Carter v. West Feliciana Parish School Board
George v. Davis, President, East Feliciana Parish School Board
Smith v. Concordia Parish School Board

(May 28, 1969)

Before BROWN, Chief Judge, GOLDBERG, Circuit Judge and CABOT, District Judge.

GOLDBERG, Circuit Judge: We have before us appeals from three district court decrees covering thirty-six parish school systems and two city school systems, all in the state of Louisiana. These cases were submitted and argued April 21, 1969, two years after the en banc decision of this court in *Jefferson II*, and eleven months after the decision of the United States Supreme Court in *Green v. School Bd. of New Kent County*. All of the school districts involved are under the uniform decree that *Jefferson II* required for school systems in the Fifth Circuit operating under freedom of choice plans.

I. Background

Twenty-nine of the districts are appellees in appeals from an en banc decision of the District Court for the Western District of Louisiana, which declined to order modification, requested on the authority of *Green*, in existing desegregation plans.

United States v. Jefferson County Bd. of Educ., 372 F.2d 836 (5th Cir. 1966) (hereinafter *Jefferson II*), aff'd with modifications en banc, 380 F.2d 385 (5th Cir.) (hereinafter *Jefferson II en banc*), cert. denied sub nom. Caddo Parish Sch. Bd. v. United States, 389 U.S. 840, 19 L.Ed.2d 101 (1967).

Green v. County Sch. Bd. of New Kent County, 391 U.S. 430, 20 L.Ed.2d 716 (1968).

Lemon v. Lake Charles Sch. Bd., 281 F. Supp. 54 (W.D. La. 1968).

By order of January 6, 1969, without opinion, this court, on a poll of its members, denied the motion of appellants in the Western District cases that those cases be heard by the court en banc. Cleveland v. Union Parish Sch. Bd., 408 F.2d 1231 (5th Cir. 1969). The dissenting opinion to that order appears in 408 F.2d at 1231.

Both the Western District and the Eastern District cases were among those consolidated on appeal in Adams v. Madison, 401 F.2d 561 (5th Cir. 1968).

Eight parishes are appellees in similar appeals from a decree of the District Court for the Eastern District of Louisiana.

The Tangipahoa Parish School Board is appellant in an appeal from another decree of the Eastern District directing it to change from a *Jefferson* decree freedom of choice plan to one calling for the assignment of students "by adoption of geographic zones, or pairing of classes, or both."

We begin with principles both basic and familiar to all who are concerned with the complex problem of ending the dual school system in the South. There can be no doubt of the duty of school boards to act affirmatively to abolish all vestiges of state-imposed segregation of the races in the public schools. *United States v. Indianola Municipal Separate Sch. Dist.*, 5 Cir. 1969, ___ F.2d ___ (No. 25655, Apr. 11, 1969); *Henry v. Clarksdale Municipal Separate Sch. Dist.*, 5 Cir. 1969, ___ F.2d ___ (No. 23253, Mar. 6, 1969); *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968); *Jefferson I*, *supra*.

The respective burdens and roles of school boards and district courts are articulated in *Green* itself:

> The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.

> The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed

[illegible] F. Supp. [illegible] (E.D. La. 1969)

[illegible] F. Supp. [illegible] (E.D. La. 1969)

> plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state-imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief. Of course, where other, more promising courses of action are open to the board, that may indicate a lack of good faith; and at the least it places a heavy burden upon the board to explain its preference for an apparently less effective method. Moreover, whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that state-imposed segregation has been completely removed.

391 U.S. 430, 439 at 724.

If under an existent plan there are no whites, or only a small percentage of whites, attending formerly all Negro schools, or only a small percentage of Negroes enrolled in formerly all white schools, then the plan, as a matter of law, is not working. *Henry v. Clarksdale*, *supra*; *Adams v. Mathis*, *supra*.

The good faith of a school board in acting to desegregate its schools is a necessary commitment to the achievement of a unitary school system, but it is not itself the yardstick of effectiveness.

The majority of the school boards involved in these appeals did not begin any type of desegregation of their schools prior to being ordered to do so for the 1965-1966 school year.* All have been operating for the 1967-68 and 1968-69 school years under *Jefferson* decree freedom of choice plans for pupil assignment, which under numerous decisions of this circuit are required to be uniform.

All now know, judges, lawyers and school boards, that freedom of choice, *Jefferson* variety or otherwise, is not a constitutional end in itself but only a means to the constitutionally required end of the termination of the dual school system. *Green, supra*; *Jefferson II, supra*. Since *Green* this court explicitly has rejected freedom of choice plans that were found to be demonstrably unsuitable for effectuating transition from dual school systems to unitary nondiscriminatory systems. *See, e.g., Anthony v. Marshall County Bd. of Educ.*, 5 Cir. 1969, ___ F.2d ___ [No. 26432, Apr. 15, 1969]; *United States v. Greenwood Municipal Separate School Dist.*, 406 F.2d 1086 (1969); *See also Graves v. Walton County Bd. of Educ.*, 403 F.2d 180 (5th Cir. 1968); *Bd. of Public Instruction of Duval County v. Braxton*, 402 F.2d 900 (5th Cir. 1968).

II. The Western District Cases

The Western District Court, sitting en banc, found that the operation of *Jefferson*-type freedom of choice in the school districts before it "has real prospects for dismantling the dual system at the earliest practicable date," and concluded that the best method available to eradicate the

* Twenty-two of the school boards were ordered to integrate their school systems beginning with the 1965-66 school year. Two boards commenced with the 1964-65 school year. Nine began in 1966-67, and five did not begin until the 1967-68 school year.

dual system of schools in these districts is freedom of choice."

Appellants in the Western District cases contend that the statistical record manifestly reveals that the dual system continues and that freedom of choice has failed to produce meaningful results. They argue that the statistical record requires reversal when considered in light of *Green* and the cases in this circuit following *Green*.

The appellee school boards insist that *Green* does not foreclose the continuation of their *Jefferson* decree freedom of choice plans. They read the statistics as revealing that progress, though in most instances statistically nominal, has been made toward the elimination of the dual system. They argue that the district court appropriately could conclude that the uniform *Jefferson* decree freedom of choice plans under which they are operating do provide the effective relief referred to by *Green*, because, in the language of *Green*, they are operating in good faith and under plans which have real prospects for dismantling the state-imposed dual system "at the earliest practicable date." 391 U.S. 430 at 724.

We turn to the facts. In the Appendix to this opinion we set out the best statistical data made available to this court for the 1967-68 and 1968-69 school years, and such data as presently is available for 1969-70 (recognizing that the latter necessarily is not complete; see note 2 to the Appendix.) In the current school year, 1968-69, in every one of these school districts there is at least one all-Negro school, in most districts many more than just one.

In all of the twenty-nine districts, for the current school year, only two white students exercised their freedom of

[2] With every ounce of appellate wisdom we possess we think freedom of choice is the best plan available. We are not today ready to supersede the choices already selected by resorting automatically to something that is working and ready blindly into an experimental grab bag. 391 U.S. at 440.

choice by electing to attend all Negro schools. To the extent data is available for the 1969-70 school year, from choice forms already exercised and reported to us since oral argument of these cases, no change of substantial consequence in this situation can be projected. *See* Appendix.

The number of Negro students attending formerly all white schools has risen slightly since the adoption of the *Jefferson* decree plans, but for the current school year the percentage this represents of the total Negro student population is minimal—only five of these twenty-nine systems have more than ten percent of their Negro children attending formerly all white schools. Four parishes have less than one percent integration.

In no instance does the data made available to us for projected 1969-70 pupil assignment vary the situation existent for the current year sufficiently that compliance with constitutional standards can be projected.

We do not abdicate our judicial role to statistics. But when figures speak we must listen. It is abundantly clear that freedom of choice, as presently constituted and operating in the Western District school districts before us, does not offer the "real prospect" contemplated by *Green*, and "cannot be accepted as a sufficient step to 'effectuate a transition' to a unitary system." 391 F.2d 28 at 720-727.

In addition the boards are required to examine other alternatives. The presence of other and more promising courses of action at the least may indicate lack of good faith on the board and place a heavy burden on the board to explain its preference for an apparently less effective method. *Green*, at 391 F.2d 28, 721. If there are reasonably available other ways promising speedier and more effective conversion to a unitary non-racial system, freedom of choice must be held unacceptable. *Id.* at 725. *Jefferson v. Hackett*, 5 Cir., 1969, ——— F.2d ———, *United States v. Greenwood*, supra.

We reverse and remand these cases to the district courts in order that a new plan may be put into effect in each school district. The duty is upon the school boards to

come forward with realistic and workable plans, and the assessment and initial review and approval or rejection of each plan is for the district court, not for this court, so removed as we are from "the circumstances present and the options available in each [of twenty-nine] instance[s]." *Green*, *supra*, 20 L.Ed.2d at 724; *Anthony* v. *Marshall County*, *supra*; *United States* v. *Greenwood*, *supra*; *Adams* v. *Mathews*, *supra*; *Bd. of Public Instruction of Duval County* v. *Braxton*, *supra*; *Henry* v. *Clarksdale*, *supra*. This is not to say that the district court on the scene may not, if it thinks best, require a uniform approach by all districts.[1]

There are many methods and combinations of methods available for consideration, either on a district by district basis or on a uniform basis if the district court so directs. Some of these are geographic zoning if it tends to disestablish the dual system, *Davis* v. *Bd. of School Comm. of Mobile*, *supra*, 30[1] F.2d [481] (5th Cir. 1964),[2] pairing of

[1] See the concurring opinion of Judge Rives in *Duval County*:

> "Green emphasizes that school officials have a continuing duty to take whatever action may be necessary to provide prompt and effective disestablishment of a dual system. If one method is ineffective, they are to try another. Hence, no single plan is or can be judicially approved as a conclusion."

Brown I and all of its successors, as well as *Green*, *Monroe*, and *Raney*, contemplate that school plans will be prepared by local officials and school boards, not by courts. But if local officials fail to exercise their responsibilities under the Constitution district courts have authority to require or formulate the plans that should be prepared by school officials based on their expert knowledge, resources and skill. [Citations omitted.] 334 F.2d at 988.

[2] See, e.g., the discussion of *Whittenberg* v. *Greenville County School District*, [331] F.Supp. [1137] (D.S.C. March 31, 1971), at note 11, infra, and accompanying text.

> "[T]he plan which contemplates the pairing of previously segregated schools in conjunction with geographic zoning to racially separate students in accordance with sex is unacceptable." *United States* v. *Scotland Neck* [City Board of Education], [407 U.S. 484, 92 S.Ct. 2220, 33 L.Ed.2d 75 (1972)], 407 U.S. at 491, 92 S.Ct. at 2224, 33 L.Ed.2d at 81.

grades or of schools, educational clusters or parks, discontinuance of use of sub-standard buildings and premises, rearrangement of transportation routes, consolidation of schools, appropriate location of new construction, and majority to minority transfers. The resources of the Educational Resources Center for School Desegregation, at New Orleans, are available to the boards and may be utilized." We set out in the margin the approach recently taken by the United States District Court for the District of South Carolina, sitting en banc in *Whittenberg v. Greenville County School District*, ___ F.Supp. ___ (D.C. S.C. March 31, 1969) a case concerning 22 of the 93 school districts in South Carolina.[7]

[7] A hearing has not yet been held on whether the Center's plan will be adopted. At least two district judges in Louisiana have ordered the use of the facilities of this Center. Tangipahoa Parish before us on this appeal, was ordered on October 15, 1968 to produce a plan for the 1969-70 school year for unitary operation of its school system. When the school board informed the court that it was unable to find a plan better than the one in existence, the court appointed the Center to prepare a plan.

In Hayes v. St. John the Baptist Parish Sch. Bd., City, No. 14219 (E.D. La. Apr. 11, 1969), the school board, after it did not come up with a plan of its own, was ordered to consult with the Center. A hearing was set on the Center's plan. The board came in with two plans of its own. The district judge accepted one of the board's plans, which incorporated some of the Center's suggestions.

"The district court directed that all school districts submit to the office of Education, HEW, their existing method of operation, along with any changes proposed by them, and as such is develop in conjunction with HEW an acceptable plan of operation 'conformable to the constitutional rights of the plaintiffs . . . and consonant in timing and method with the practical and administrative problems faced by the particular districts.' If a plan is agreed upon by the school district and HEW, the South Carolina district court will approve it unless the plaintiffs show it does not meet constitutional standards. If the school district already is operating under a plan approved by HEW, it will be adopted by the court absent a showing of constitutional infirmity. If no agreed plan is developed, the court will hold a hearing and enter its decree, considering the respective proposed plans of the district, the plaintiffs, and HEW

We are urged by appellants to order on a plenary basis for all these school districts that the district court must reject freedom of choice as an acceptable ingredient of any desegregation plan. Unquestionably as now constituted, administered and operating in those districts freedom of choice is not effectual. The Supreme Court in *Green* recognized the general ineffectiveness of freedom of choice:

> "The Supreme Court said: 'The general experience under freedom of choice to date has been such as to relegate its motivation as a tool of desegregation.' 391 U.S. at 439 at 725)

See also the opinion of District Judge Hoehe in *Moses v. Washington Parish School Board*, 276 F. Supp. 43 at 45 (E.D. La. 1967):

> "If this Court must pick a method of assigning students to schools within a particular school district, barring very unusual circumstances, it could imagine no method more inappropriate, more unworkable, more needlessly wasteful in every respect than the so-called 'free choice' system.
>
> "Under such a system the school board cannot know in advance how many students will desire any school in the system. It cannot even begin to estimate the number. The first principle of pupil assignment in the scheme of school administration is thus thwarted; the principle ought to be to utilize all available classrooms and schools to accommodate the most favorable number of students. Instead this aim is considered in order to introduce an element of 'liberty' (notice before put of efficient school administration on the part of the students in the choice of their own school. Obviously there is no constitutional right for any student to attend the public school of his own choosing. But the extension of the freedom of choosing one's school (not from being a right of the student, just even considered with normal school administration) further the creation of such a choice only has the result of dismantling the school system itself, as it defeats depriving every student of a good education.
>
> "Under a 'free choice' system the school board cannot know or estimate the number of students who will want to attend any school or the stability of those who will eventually get their choice accomplished. The board cannot make plans for the reorganization of students in schools, plan curricula, or even plan such things as lunch allotments and schedules. Separate [illegible] cannot be made for [illegible] appropriate distribution of teachers could not [illegible]

lale Grantie, supra; United States v. Greenwood, supra; United States v. Indianola, supra.

Also a plan which will "effectuate a transition to a racially nondiscriminatory school system" must include adequate provisions concerning staff, facilities, transportation and school activities of the entire school system.

III. The Eastern District cases

In the Eastern District cases the district judge concluded that freedom of choice was working well and was the best available method for the school boards to reach their constitutional obligations.

Appellants and the school boards make the same contentions in these cases as were made in the Western District cases. Again, the statistical evidence makes abundantly clear that the freedom of choice plans as presently constituted, administered and operated, are failing to eradicate the dual system. See Appendix. For the current year not one of these districts has as many as ten percent of its Negro students enrolled in formerly all white schools. The 1969-70 data shows that Iberville Parish has achieved ten percent, up from 9.2% for the current year. In all these districts no white student chose to attend an all Negro school in the current year, and none has chosen an all Negro school for 1969-70. Further, all Negro schools exist in these districts in 1969-70. As in the Western District, the partial 1969-70 data supplied to this court does not indicate any real degree of attainment of constitutional standards in 1969-70. The board must adopt new plans.

In addition, in evaluating the plans before him the district judge did not apply the standard of whether the plans are working but rather that of whether they could work. This is an erroneous standard. When testing the adequacy of a plan that has been in operation sufficiently long to produce meaningful empirical data, that data must be considered and a determination made of whether the plan is effectuating a transition to a racially nondiscriminatory school system. And the court requires the district judge to weigh the

existing plan in the light both of the facts at hand and of any alternatives which may be shown as feasible and more promising. The district court must consider the alternatives.

Also, the district court erred in holding that segregation which continues to exist after the exercise of unfettered free choice is "de facto" segregation and as such constitutionally permissible.

These cases must be reversed and remanded under the same directions as the Western District cases.

IV. The Tangipahoa Parish case

Pursuant to *Green* the district court required the Tangipahoa School Board to present a new plan to replace the existing freedom of choice plan which on October 15, 1968 it found to be ineffective. The court conducted hearings, similar to those now mandated to be held in the Western District and for the other Eastern District cases, and approved a new plan. This court has said repeatedly what we say in this opinion, that the responsibility for structuring and administering existing and new plans for disestablishing the dual system is upon the school boards and the administrators, and the primary responsibility for assessing and reviewing the plan and adopting necessary changes is upon the district court on the scene rather than at the appellate level. In the *Tangipahoa* case the district court correctly applied this policy, after a review of the facts. We affirm its decision.

V

Moore v. *Tangipahoa Parish,* No. 27391, is AFFIRMED. All other cases are REVERSED and REMANDED to the district courts with the following instructions.

(a) These cases shall receive the highest priority.

(b) No later than thirty days from the date of the mandate each school board shall submit to the district court a proposed new plan for its school district to be effective with

the commencement of the 1969-70 school term. Provided, however, if the district court desires to require a uniform type of plan, or a uniform approach to the formulation of plans, or issue instructions to the boards of methods that it will or will not consider, or other appropriate instructions, it shall enter its order to that effect within ten days of the date of the mandate. If the district court enters such an order the maximum time for filing plans shall be thirty days from the date of such order.

(c) The parties shall have ten days from the date a plan is filed with the district court to file objections or suggested amendments thereto.

(d) For plans as to which objections are made or amendments suggested, or which in any event the district court will not approve without hearing, the district court shall commence hearings beginning no later than ten days after the time for filing objections has expired.

(e) New plans for all districts effective for the beginning of the 1969-70 school term shall be completed and approved by the district courts no later than July 25, 1969.

Because of the urgency of formulating and approving plans to be effective for the 1969-70 school term it is ordered as follows. The mandate of this court shall issue immediately. This court will not extend the time for filing petitions for rehearing or briefs in support of or in opposition thereto. Any appeals from orders or decrees of the district court on remand shall be expedited. Any appeal may be on the original record. The record on any appeal shall be lodged with this court and appellant's brief filed, all within thirty days of the date of the order or decree of the district court from which the appeal is taken.

APPENDIX C

PART 1

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

Civil Action No. 9981

RICKEY DALE CONLEY, ET AL

v.

LAKE CHARLES SCHOOL BOARD AND CALCASIEU PARISH SCHOOL BOARD, ET AL

And 33 Companion Cases, Including Smith v. Concordia Parish School Board

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
Filed
July 8, 1969
ALTON L. CURTIS, *Clerk*
By: /s/ T. W. THOMPSON
Chief Deputy Clerk

TO ALL SCHOOL BOARDS NAMED ABOVE, TO ALL COUNSEL, AND MOST ESPECIALLY TO ALL REPRESENTATIVES OF HEW, AND THE CITIZENS OF THE WESTERN DISTRICT OF LOUISIANA.

STATEMENT BY BEN C. DAWKINS, JR., CHIEF UNITED STATES DISTRICT JUDGE, WESTERN DISTRICT OF LOUISIANA, ISSUED INITIALLY IN MID-EVENING OF JULY 3, 1969, RELATING TO THE ABOVE-CAPTIONED CASES.

PREFACE

More than fifteen years ago, the Supreme Court—overruling all of its earlier decisions to the contrary—decided that segregated public schools no longer were constitutionally permissible. There have been myriads of Supreme Court and lower appellate court decisions on that subject since then, the most recent one, as to the above-captioned School Boards directly affecting the Louisiana schools, having been rendered May 28, 1969.

The sum and substance of the law now—as decided by Congress and the higher courts—is that the initial approach of "all deliberate speed" no longer is valid, and that "Freedom of Choice" alone is not working fast enough. Accordingly, in these cases the Fifth Circuit Court of Appeals, at New Orleans, now has held, as of May 28, 1969, that other more expeditious steps, such as zoning and pairing of schools, must be used.

Against that background, on July 3, 1969, we were asked by The Shreveport Times to make some comment, specifically insofar as a new joint national policy statement had been issued only a few hours earlier that date by HEW Secretary Finch and Attorney General Mitchell (with the approval of President Nixon), the chief enforcement officers directly involved, relaxed substantially the time deadlines theretofore fixed by HEW as fall 1969, so as to allow a little more time for full implementation of total desgregation.

As Chief Judge of this Federal District Court, and after full consultation with our other two Judges, Honorable Edwin F. Hunter, Jr., of Lake Charles, and Honorable Richard J. Putnam, of Lafayette, this judge hurriedly prepared such a comment, which got considerably garbled in dictating it to The Times by telephone, with the Times' representative doing the best he could taking it down on a typewriter. The statement was read back by another Times staff member, where corrections were made, but due to pressures of time on all concerned, it still came out somewhat garbled, both in The Times and possibly even more so in newspapers who received it by wire service. The accurate statement should have read as follows:

* * *

We hope it will be understood quite clearly that we judges of this federal district court can make no more than a general comment upon the new policy guidelines announced today in Washington.

This is so because we three judges now have pending before us some 30-odd cases involving litigation con-

cerning desgregation of schools in the Western District of Louisiana.

To all nonlawyer citizens who may not know this, we suggest that they ask any lawyer or judge of the State courts, who will confirm that it would be highly unethical for us at this stage to comment upon or discuss publicly and specifically the situation concerning any particular school district.

In general, however, we can state without reservation that the new policies issued today (July 3rd) give all of us—federal courts, school boards, parents of school age children, and even those of pre-school age grandchildren, such as my own four grandchildren, three of whom are not yet in school—a sort of new breath of fresh air to replace the virtually intolerable situation all of us were faced with prior to the new policy developments announced today.

We say this with great gratitude—political considerations being entirely beside the point—from nearly all of the mature, thoughtful citizens of both races.

All of us—black and white alike—owe a debt of eternal gratitude, not only to the obvious compassion of President Nixon, Secretary Finch and Attorney General Mitchell—but to the untiring efforts of many, many good people of all political ties who have worked tirelessly behind the scenes to bring this about. Among the forefront of these highly effective people have been our own congressmen and senators, elected by all of us to represent the true feelings of the vast majority of all citizens, white and Negro alike.

Lauds Waggonner

To this judge, however, greatest credit of all belongs to Honorable Joe D. Waggonner of the 4th Congressional District. We have talked and conferred with him many, many times in the past five weeks since the May 28 decision of the 5th Circuit Court of Appeals in New Orleans,

which for all practical purposes generally has ruled out "freedom-of-choice" as an unacceptable method of achieving total desegregation as decreed by the Supreme Court and Congress.

This means eventual abolishment of our formerly dual system and conversion of it into a unitary system where there are no "black schools" and no "white schools" as such, but simply schools. Congressman Waggonner in our judgment has accomplished, by his untiring, unceasing efforts, an almost superhuman task in bringing home to the right people at the right time, the true facts of educational life, not only in Louisiana, but in the entire nation.

It is only from the militants—liberals, Socialists or by whatever name they should be labeled—that we now hear complaints as to the new guidelines. In our judgment, these militants—always noisy and often quite articulate—should be regarded nationwide as a tiny, tiny fragment of our entire citizenry, who somehow seem to capture the spotlight in their protests in our news media, and while they have the constitutional right to speak their piece, they are outnumbered everywhere in our great nation by the Great Silent Majority.

Of course, notwithstanding strong disagreement by many, the Supreme Court and higher appellate courts have the final say-so, as to what the Constitution means or does not mean. Let's face it together. Under our system of government under law, and not by man alone, it is the best form of government ever devised by man, not only in our own time, but in the long history of mankind.

We must live by law or we shall be destroyed as a civilization, either from without or within. It is indeed the last best hope we have, based, in our nation, upon the eternal principles of the essential dignity and respect of each man for the other and his rights.

Let us not mislead you—segregation as a way of life obviously is gone forever in this land of ours. Many dif-

ficult, even tormenting, days lie ahead of us. But the United States of America, under this system, has grown in less than 200 years to be the most powerful, the richest, the most providential, nation for all of its people of any nation on the face of the earth.

We must sustain our indissoluble Union of States and our Constitution which were established for us by our forefathers. They decreed in 1789 that we should have a government regulated according to nature's laws, foreordained by Almighty God Himself.

Now, we are on a new threshold in our glorious—but on rare occasions inglorious—history. We must meet with great circumspection and deep insight the challenges that lie ahead, not just against our outward enemies on foreign soil, but perhaps even more forcefully against those who would destroy us from within.

Solemn Obligation

This duty, this solemn obligation of American citizenship, rests upon each and every one of us in both our private and public lives. We must, indeed we imperatively must, put down the wanton violence which often grows from internal discontent which so frequently is generated by foreign forces insinuating themselves into our society or by laziness, slothfulness, immoral attitudes, and the ingrained idea of some that the world, meaning us taxpayers, owes them a living, just because they are here by no choice of their own.

This is so wrong, so utterly wrong! But we must remind you again that the root cause of such attitudes grows not from our system of government, which at times has seemed to try to be all things to all people, but from a lack of fundamental understanding that, regardless of a few words in the Declaration of Independence, all men are NOT created equal except in equality of opportunity

for growth, physical, spiritual and material, under our Constitution.

In essence, Man is what he is born, what he has tried to do for himself and what he is educated to be, whether it be doctor, lawyer, merchant, chief, or laborer or even thief.

That brings us back to the initial point—our system of education, which is the most important feature personally in all our lives. Without it, any or all are lost. Living itself is a constant process of education, whether it be hard or easy, rough or sleazy. We must, we must—maintain our system of public education, which, together with our constitutional precepts, has exalted us to the highest standard of living over-all of any nation in the world.

It was this judge's displeasure to visit the Soviet Union —Communist Russia—about one year ago. We saw the so-called show places and past glories of Leningrad and Moscow, the old Czarist palaces and all else they pointed to with pride, and which they did not themselves create; but we also saw the countryside, with its sod-roofed hovels, its collective farms and the like. While we must and do respect Soviet scientific achievements, and indeed all of us fear them in the field of intercontinental ballistic missiles, above all else we could not escape observing the faces of the Russian people themselves. Never, anywhere, anytime, have we seen such obviously miserable, totally regimented people. No one ever smiled, even at each other. They were totally brainwashed.

They knew nothing of the material comforts of the outside world. They knew nothing of the wonder of America —where even the smallest home sprouts a TV antenna, and at least one automobile in front of it, and where few people comparatively really go hungry or are poorly fed. What a place Russia was and is! It was like an entrance into Dante's Inferno and when we left, even upon arriving

at its little satellite Finland, it was as if one were emerging into bright sunlight from deep darkness where—in Finland—there were laughing young mothers, pushing perambulators, rosy cheeked children, well dressed and groomed, clean and clear eyed.

So it is, even more so with us. We must emerge from racial disharmony into mutual understanding among our population, no matter what the color of a person's skin may be. We must help underprivileged people, black or white, when they are unable to help themselves. In our public schools, where some mental laggards cannot help their condition by themselves, we must upgrade them as best we can by intensive remedial programs. We must give them proper training to the limit of their ability. One step further, we must upgrade our so-called average learners by enrichment of their educational opportunities so that many present C-average learners who are potentially A-graders and also need help because of possible environmental disadvantage, may reach the full limit of their capabilities.

And, finally, at the same time, sound educational principles seem to dictate that the so-called rapid learners, those who naturally are endowed with superior attainment capabilities, are given full opportunity to develop according to their inborn talents, regardless of race, and not be held back to the least common denominator within their schools.

In other words, while it now is the law of the land, as established both by the Supreme Court edicts and by the Congressional Civil Rights Act of 1964, we may not discriminate because of race, but we may do so within our schools according to scientifically proven ability, or lack of it, as the case may be, ever trying to be helpful to all.

This philosophy, which we believe to be educationally unquestionable, now brings us to the general matter of

plans for the future, education-wise, in the Western District of Louisiana. Specifically, we will not require substantial bussing of students, over long distances, or unreasonable assignments to other schools, simply to achieve a racial balance, for such is expressly prohibited by the Civil Rights Act of 1964.

We have not yet seen in writing the specific plans to be submitted by the School Boards and HEW. At this moment, all we know is what we have seen or heard in the press, TV or radio, which is quite fragmentary.

Nevertheless, from what we thus have observed, it would appear strongly at first blush that, educationally, what HEW has proposed to the various boards is either "outrageous, utterly unrealistic or totally impossible economically." And, if this indeed is the case, you may rest assured that we judges will not—the words are WILL NOT—accept or approve them. At the other end of the spectrum, we have been advised informally that a few local boards will submit no plans at all, or only token plans, as required by our order of June 5 pursuant to the mandate of the Fifth Circuit Court of Appeals.

If such is true, then that, too, is utterly unrealistic and ridiculous! We know, however, that some far-thinking boards, who do understand plain English, in good faith will submit plans as required by the Fifth Circuit decree, on July 5.

It appears, therefore, that we probably will have to conduct separate hearings for each school system. We have advised the judges of the Court of Appeals that we undoubtedly will need additional time beyond its July 25 deadline as contained in its decree of May 28.

All but one of these judges have indicated unanimously that such additional time will be granted to this court upon our formal or informal application.

We shall get this if it is needed.

We are entering a new order in these cases on July 5 requiring both the boards and HEW (plaintiffs' attorneys, government or private, are not to be permitted to participate in these discussions) to meet with one another immediately and negotiate seriously and fairmindedly.

We have been informed by the new policies issued today and by the head of the regional office of HEW at Dallas that thoroughly trained educators, of a practical mind, will participate with the boards in giving the obviously-necessary consideration and serious, in-depth advice to each board. These negotiations, under our July 5 order, if necessary, may continue until July 21, when we will then receive reports as to points of agreement or disagreement, and will determine whether it will be necessary for us to conduct hearings with live witnesses, maps showing locations and schools and children of both races, proposed district zoning, etc.

Of course, in our June 5 order, we allowed plaintiffs' counsel 10 days from the final reports within which to object or to make further suggestions, and this will be done.

In any event, under the new policy guidelines issued today, which give us considerably more elbow room than was available before, we believe we can obtain from every board, HEW and plaintiffs, over-all plans which will cover the entirety of desegregation but which may be implemented as follows:

1. Substantial implementation in the fall of 1969;

2. Definite commitments to further implement or complete, if necessary, the achievement of such plans by the fall of 1970;

And, 3. Final implementation, in exceptional cases, by no later than the fall of 1971.

We Judges shall be available, as needed, during the course of these negotiations, to MEDIATE points of possible difference between the Boards and HEW.

It should be remembered, by all concerned that, as courts, we possess inherent powers to enforce our lawful orders by all necessary means, and we shall not hesitate to exercise such powers, if persuasion fails. This is not intended as a threat to anyone, but merely to remind HEW and the School Boards, that our lawful orders will be enforced, as compassionately but as firmly as possible, which goes almost without saying.

That is all (even if too long) we can say at this time.

This is an Order which supplements our Order of July 5, 1969 and is to be followed to the letter.

THUS ORDERED AND DECREED, at Shreveport, Louisiana, this 8th day of July, 1969.

FOR THE COURT

/s/ BEN C. DAWKINS, JR.
Ben C. Dawkins, Jr., Chief Judge

APPENDIX C

PART 2

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. 11577

IRMA J. SMITH, ET AL., *Plaintiffs,*

v.

CONCORDIA PARISH SCHOOL BOARD, ET AL., *Defendants.*

Opinion and Order

(entered 1 August, 1969)

This cause is one of the cases consolidated for appeal to the United States Court of Appeals, Fifth Circuit, under the style of "Hall v. St. Helena Parish School Board," Docket No. 26450 and No. 27703. In Hall, the Court of Appeal [sic] reversed the decision of this Court which had approved the continuance of a freedom of choice plan for the purpose of eliminating the vestiges of the dual school system formerly operated in Concordia Parish. The case was remanded for further hearings in this Court.

This Court, on 5 June 1969, entered an order requiring the defendant school board to consult with the United States Department of Health, Education and Welfare (HEW), and, after such consultations, to submit new plans prior to the 5th of July, 1969.

This time was extended 16 days, and on 8 July 1969 a supplemental order was issued by this Court.

An informal conference was conducted by this Court on 16 July 1969, and this matter was heard formally in Court on July 29 and July 30, 1969. On the basis of the evidence introduced, the plans submitted by the defendant school

board, and the record of this case, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Concordia Parish School Board operates 13 public schools. There are approximately 7000 students in the system, approximately 3868 of whom are white and 3227 are Negro.

2. In the public schools of the Ferriday-Clayton area approximately 65% of the pupils and teachers are Negro and 35% of the pupils and teachers are white, and this fact, together with the locations and capacities of the schools, condition of the transportation facilities, and other relevant factors shown by the record, make these exceptional cases within the contemplation of the 8 July 1969 order of this Court so as to require final and full implementation no later than the fall of 1971.

3. The plan submitted by the defendant school board reflects that for the 1969-70 school year there will be substantial integration of students, faculty and transportation.

4. The original plan submitted by the HEW is rejected as unworkable and impractical. If adopted, there is grave danger that it would create an all Negro, or substantially all Negro, public school system and thwart the objectives enumerated in the desegregation cases.

5. The plan filed by the defendant school board in the record of this case on 30 July 1969 meets the requirements of law for effectively dismantling the dual school system of Concordia Parish completely at the earliest practicable date within the standards set out in Green v. New Kent County, Va. (36 L.W. 4476).

6. The plan submitted by the defendant school board is acceptable to the HEW insofar as the degree of integration is concerned except that the HEW does not take a position

on the time element and the separation of sexes, which are matters left by them with the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

I.

That the plan of the Concordia Parish School Board filed in evidence in this cause on 30 July 1969, a copy of which is annexed hereto as Exhibit A, be and it is hereby approved and ordered to be immediately implemented, and the defendants, their agents, officers, employees and successors, and all those in active consort and participation with them, be and they are permanently enjoined from discriminating on the basis of race or color, creed or national origin in the operation of the Concordia Parish school system.

II.

The transportation system will be integrated to coincide with and implement the plan herein approved, and busses shall be routed to accomodate [sic] all students without consideration of race or color, creed or national origin consistent with said plan.

III.

That all teachers shall be employed and assigned to the various schools in the school system without consideration of race or color, creed or national origin, except as required by the plan for the purpose of elimination of the former dual system.

IV.

TRANSFERS

(a) *Majority to Minority Transfer Policy.* The defendants shall permit a student (Negro or white) attending a school in which his race is in the majority to choose to attend another school where space is available and where his race is in a minority.

(b) *Transfers for Special Needs.* Any student who requires a course of study not offered at the school to which

he has been assigned may be permitted, upon his written application at the beginning of any school term or semester, to transfer to another school which offers courses for his special needs.

(c) *Transfers to Special Classes or Schools.* If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded, or gifted children, the defendants may assign children to such schools or classes on a basis related to the function of the special class or school. In no event shall such assignments be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color.

V.

Services, Facilities, Activities and Programs

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to longstanding, non-racially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the defendants shall be conducted without regard to race or color.

VI.

Faculty and Staff

(a) *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on a desegregated faculty, the decision of the U.S. Court of Appeals for the 5th Circuit in the Bessemer Case; and the Ruling of the Supreme Court in Carr vs. Montgomery shall be followed.

(b) *Dismissals.* Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filed [sic] through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

(c) *Past Assignments.* The defendants shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

VII.

Reports to the Court

The defendants shall serve upon opposing counsel and file with the Clerk of the Court within 15 days after the opening of schools for the fall semester of each year, a report setting forth the following information:

(i) The number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this sub-paragraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

(ii) The number of students by race, in each grade of each school.

VIII.

New Construction

The defendants, to the extent consistent with the proper operation of the school system as a whole, shall locate any new school and substantially expand any existing schools with the objective of eradicating the vestiges of the dual system.

IX.

The Marshal shall serve each of the defendants herein with a copy of this decree.

Thus Done and Signed, in Chambers, in Shreveport, Louisiana, on this the 1st day of August, 1969.

/s/ Ben C. Dawkins, Jr.
Judge

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CIVIL ACTION NO. 11,577

IRMA J. SMITH, ET AL.

vs.

CONCORDIA PARISH SCHOOL BOARD, ET AL.

Pursuant to the Order of this Honorable Court dated 8 July 1969, the following plan was approved by the Concordia Parish School Board for submission to the Court in compliance with the applicable desegregation orders.

PROPOSED PLAN FOR 1969-70 SCHOOL YEAR (PHASE ONE)

VIDALIA AREA

1. Vidalia Elementary School—Grades 1-5. Capacity with three temporary buildings—700.

Projected Enrollment (White)	622
Negro students living in north and west Vidalia area presently being bused will be transported to Vidalia Elementary School instead of Concord	78
Total Projected Enrollment	700

2. Vidalia Junior High School—Grades 6-8. Capacity with two temporary buildings—422.

Projected Enrollment (White)	366
Negro students living in north and west Vidalia area presently being bused will be transported to Vidalia Junior High School instead of Concord	46
Total Projected Enrollment	412

3. Vidalia High School—Grades 9-12. Capacity with six temporary buildings—443.

Projected Enrollment (White)	405
Negro students living in north and west Vidalia area presently being bused will be transported to Vidalia High School instead of Concord	30
Total Projected Enrollment	435

4. Concord High School—Grades 1-12. Capacity—592.

Former Projected Enrollment (Negro)	705
Less Negro students who live beyond the city limits of Vadalia who will be transported to Vidalia Elementary, Vidalia Jr. High and Vidalia High Schools	—154
Total Projected Enrollment	551

RIDGECREST AREA

Ridgecrest Elementary School—Grades 1-6. Capacity 336. This is a new school.

Students who formerly attended Ferriday Elementary School and Ferriday Junior High School	303
Negro students who live in close proximity of the Ridgecrest School	33
Total Projected Enrollment	336

CLAYTON AREA

Clayton Elementary School—Grades 1-6. Capacity 168.

Projected Enrollment (White)	84
White students who ride buses that presently go by the Clayton School	41
Negro students who live in close proximity of the Clayton School	43
Total Projected Enrollment	168

MONTEREY AREA

Monterey High School—Grades 1-12. Capacity with one temporary building—456.

Projected Enrollment (White)	390
Negro students who live in immediate vicinity but heretofore have been transported to Ferriday	58
Total Projected Enrollment	448

FERRIDAY AREA

1. Ferriday Elementary School—Grades 1-6. Capacity 821. This school was formerly Grades 1-5. With the opening of the Ridgecrest Elementary School, the organization has been changed to 1-6.

Projected Enrollment (White)	658
Negro students who live north of Ferriday in the Lake St. John area would be transported to Ferriday Elementary School	96
Negro students living on Concordia Drive would be transported to Ferriday Elementary School	67
Total Projected Enrollment	821

2. Ferriday Junior High School—Grades 7-8. Capacity 448.

Projected Enrollment (White)	383
Negro students who live north of Ferriday in the Lake St. John area would be transported to Ferriday Junior High School	33
Negro students living on Concordia Drive would be transported to Ferriday Junior High School	32
Total Projected Enrollment	448

3. Ferriday High School—Grades 9-12. Capacity with seven temporary buildings—644.

~~Projected Enrollment~~ (White)	586
Negro students who live north of Ferriday in the Lake St. John area would be transported to Ferriday High School	45
Negro students living on Concordia Drive would be transported to Ferriday High School	13
Total Projected Enrollment	644

4. Ernestine Washington Elementary School—Grades 1-6. Capacity 1400.

Projected Enrollment (Negro)	1340
Less: Students transported to Ferriday Elementary School	—163
Students going to Ridgecrest	—33
Total Projected Enrollment	1144

5. Sevier Junior High School—Grades 7-8. Capacity 448.

Projected Enrollment (Negro)	423
Less: Students transported to Ferriday Jr. High School	—65
Total Projected Enrollment	358

6. Sevier High School—Grades 9-12. Capacity with temporary buildings 644.

Projected Enrollment (Negro)	646
Less: Students transported to Ferriday High School	—58
Total Projected Enrollment	588

FACULTY
1969-70 School Year

All faculty will be integrated as previously proposed ie—at least four of the opposite race in all schols except for the small school at Clayton which will be proportionately integrated as to faculty, and the Ferriday schools which will have six teachers of the opposite race.

TRANSPORTATION
1969-70 School Year

Transportation will be substantially integrated during the 1969-70 school year.

PROPOSED PLAN FOR 1970-71 SCHOOL YEAR (PHASE TWO)

VIDALIA AREA

The Vidalia area will be totally integrated as reflected by the charts below:

VIDALIA JUNIOR HIGH SCHOOL (GIRLS) GRADES 1-6

GRADES	1	2	3	4	5	6	TOTAL
WHITE	76	58	59	60	59	62	374
NEGRO	32	38	32	31	42	41	216
TOTAL	108	96	91	91	101	103	590

VIDALIA ELEMENTARY SCHOOL (BOYS) GRADES 1-7

GRADES	1	2	3	4	5	6	7	TOTAL
WHITE	71	88	77	56	65	54	67	478
NEGRO	32	27	37	37	30	37	31	231
TOTAL	303	115	114	93	95	91	98	709

VIDALIA HIGH SCHOOL (GIRLS) GRADES 7-12

GRADES	7	8	9	10	11	12	TOTAL
WHITE	59	74	47	55	33	37	305
NEGRO	24	24	25	26	19	20	138
TOTAL	83	98	72	81	52	57	443

CONCORD SCHOOL (BOYS) GRADES 8-12

GRADES	8	9	10	11	12	TOTAL
WHITE	67	48	53	28	29	225
NEGRO	28	31	25	18	18	120
TOTAL	95	79	78	46	47	345

The faculties will be totally integrated according to the racial composition of the Vidalia area.

School transportation will be totally integrated.

RIDGECREST AREA

All students, Negro and white, Grades 1-6, living in the Ridgecrest area will attend the Ridgecrest Elementary School.

All boys, Negro and white, Grades 7-8, will attend the Ferriday Jr. High School. This would be eight (8) Negro boys and sixty-eight (68) white boys.

All girls, Negro and white, Grades 7-8, will attend Sevier Jr. High School. This would be twenty-seven (27) Negro and one hundred fifty-five (155) white students.

The faculty will be integrated according to the racial composition of the student body.

CLAYTON AREA

The plan for 1969-70 fills the Clayton School to capacity. The 1970-71 plan projects an enrollment of eighty-four (84) white and eighty-four (84) Negro students. This enrollment would be determined according to students living in close proximity to the Clayton School.

An additional one hundred twenty-two (122) Negro students in Grades 1-6 will be transported to the Ernestine Washington Elementary School in Ferriday. Thirty-six (36) Negro boys in Grades 7-8 would be transported to the Ferriday Jr. High School, and thirty-eight (38) Negro girls in Grades 7-8 would be transported to the Sevier High School. Fourteen (14) white girls in Grades 7-8 would attend Sevier Jr. High School. Thirteen (13) white boys in Grades 7-8 would attend Ferriday Jr. High School. Fifty-seven (57) white students in Grades 9-12 would attend Ferriday High School.

The faculty will be integrated according to the racial composition of the student body.

MONTEREY AREA

All students, Negro and white, living in the Monterey School District would be assigned to the Monterey High School. This would be one hundred forty-one (141) Negro students and three hundred ninety-two (392) white students.

The faculty will be integrated according to the racial composition of the student body.

FERRIDAY AREA

The Ferriday area will continue as the 1969-70 plan with the following exceptions:

The Ferriday Jr. High School will enroll all boys, white and Negro, Grades 7-8. The Sevier Jr. High School will enroll all girls, white and Negro, in Grades 7-8. The table shown below will reflect the composition of enrollment in these schools.

Transportation will continue as in 1969-70 plan, with the exception of Grades 7-8, which will be totally integrated.

FERRIDAY JR. HIGH SCHOOL (BOYS) GRADES 7-8

GRADES	7	8	TOTAL
WHITE	118	105	223
NEGRO	106	91	197
TOTAL	224	196	420

SEVIER JR. HIGH SCHOOL (GIRLS) GRADES 7-8

GRADES	7	8	TOTAL
WHITE	99	98	197
NEGRO	113	79	192
TOTAL	212	177	389

The faculties of Ferriday Jr. High School and Sevier Jr. High School will be totally integrated. Faculties in the other schools in the Ferriday area will be integrated at a rate of 30% of the opposite race as reflected in the following chart:

SCHOOLS	NEGRO	WHITE	TOTAL
Ferriday Elementary School	8	19	27
Ferriday High School	10	23	33
Ernestine Washington Elementary School	43	18	61
Sevier High School	22	10	32

PROPOSED PLAN FOR 1971-72 SCHOOL YEAR
(PHASE THREE)

VIDALIA AREA

The Vidalia area will remain the same as the 1970-71 proposal—totally integrated by sex.

RIDGECREST AREA

The Ridgecrest area will continue to operate as in 1970-71.

CLAYTON AREA

The enrollment for the Clayton School will reflect the racial composition of the Clayton community. The faculty will also reflect the racial composition of the student body.

MONTEREY AREA

The Monterey area will continue to operate as 1970-71. The faculty will reflect the racial composition of the student body. Transportation will be integrated.

FERRIDAY AREA

Schools of the Ferriday area will be totally integrated as reflected by charts below:

WASHINGTON ELEMENTARY SCHOOL (BOYS) GRADES 1-6

GRADES	1	2	3	4	5	6	TOTAL
WHITE	102	66	69	88	66	107	498
NEGRO	126	130	128	115	118	127	744
TOTAL	228	196	197	203	184	234	1242

FERRIDAY ELEMENTARY SCHOOL (GIRLS) GRADES 1-5

GRADES	1	2	3	4	5	TOTAL
WHITE	86	84	70	67	78	385
NEGRO	105	118	107	84	120	534
TOTAL	191	202	117	151	198	919

SEVIER JUNIOR HIGH SCHOOL (GIRLS) GRADES 6-8

GRADES	6	7	8	TOTAL
WHITE	83	113	79	275
NEGRO	103	99	98	300
TOTAL	186	212	177	575

FERRIDAY JUNIOR HIGH SCHOOL (BOYS) GRADES 7-9

GRADES	7	8	9	TOTAL
WHITE	106	91	87	284
NEGRO	118	105	117	340
TOTAL	224	196	204	624

FERRIDAY HIGH SCHOOL (GIRLS) GRADES 9-12

GRADES	9	10	11	12	TOTAL
WHITE	101	86	58	38	283
NEGRO	113	80	64	67	324
TOTAL	214	166	122	105	607

SEVIER HIGH SCHOOL (BOYS) GRADES 10-12

GRADES	10	11	12	TOTAL
WHITE	79	66	68	213
NEGRO	74	68	52	194
TOTAL	153	134	120	407

Faculties will be totally integrated. School transportation will be totally integrated.

APPENDIX D

PART 1

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CIVIL ACTION NUMBER 3248

ROBERT CARTER, ET AL.

v.

WEST FELICIANA PARISH SCHOOL BOARD, ET AL.

ORDER—RE: SCHOOL DESEGRATION PLAN FOR WEST FELICIANA PARISH

Pursuant to this Court's order of July 11, 1969, the West Feliciana Parish School Board has presented to this Court a proposed plan for the desegregation of its public school system. HEW also submitted a proposed plan pursuant to this Court's order of June 9, 1969, and plaintiffs, through their counsel, have opposed the Board's plan and urged the adoption of the HEW plan. It is the contention of plaintiffs' attorney that the Board's plan merely continues a pattern of segregation in the school system of West Feliciana Parish, while the HEW plan proposed an immediate mixing of the races in all schools in the system on a percentage coinciding closely with the population percentages in the community. This Court has studied these plans carefully, and while the plan submitted by the School Board will not, for the school year 1969-1970, bring about the degree of mixing of the races in the schools of West Feliciana Parish obviously contemplated by the Court of Appeals, nevertheless, this Court is of the opinion that in accordance with the conditions hereinafter set forth, the proposed plan of the School Board for the 1969-1970 school year should be approved and adopted. There are certain local conditions existing in this particular area that were

obviously not considered in any way by the drafters of the HEW plan but simply must be given consideration before any realistic plan for the operation of that school system is adopted. For example, the use of St. Francisville High School recommended by HEW is completely unrealistic. It fails to consider either the capacity of the school or the nature of the physical facilities available. The HEW plan proposes assigning 883 students to that school which the drafters themselves state has facilities for only 850 students. They propose assigning 475 students to Baines Junior High School when, according to their own plan, the school can accommodate only 450 students. They recommend closing two schools completely, Polk Elementary and Dawson High School, even though those facilities are sorely needed in order to accommodate the student body of West Feliciana Parish. It may well be that given time to make other suitable arrangements, those negro schools could ultimately be eliminated if sound educational policies called for it. But to suddenly order closure of those schools one month before the beginning of a school year, when such closure would result in serious overcrowding of other schools, would be indefensible, both economically and educationally speaking. It seems to me that anyone supporting such a drastic move on such short notice has little interest in education of any kind. This Court must also take into consideration the fact that the elected School Board of West Feliciana Parish is composed of six white members and three negro members. The plan proposed by that Board was adopted by unanimous vote of all of the School Board members. The three negro members of that Board favor the retention of Polk and Dawson schools for this next school year, regardless of the fact that they will, in all probability, remain all negro schools. This Court has had no indication that the people of West Feliciana Parish, white or negro, favor the closure of those schools this year. The closure of those schools would be terribly disruptive of the entire educational system in that Parish and would

benefit no one. The only ones advocating such a step are some of the out-of-state employees of HEW and an attorney of record who lives in New Orleans, Louisiana. Total desegregation of this system should not be ordered on a moment's notice just to satisfy the wishes of absentee lawyers. It should be ordered immediately only if, under existing circumstances, sound educational principles call for it. This Court finds, as a fact, that in this particular case something less than the degree of integration that was contemplated by the Court of Appeals' mandate of May 28, 1969, must be considered acceptable for the immediate future as long as such acceptance is conditioned upon a firm commitment being made within a reasonable time for the complete desegregation of the system by the commencement of the following school year. Thus, this Court rejects the HEW plan as being completely unrealistic and unsound and approves and adopts the following provisions of the plan proposed by the West Feliciana Parish School Board, to-wit:

1. Effective with the commencement of the 1969-1970 school year, Tunica School, which will be used for grades 1-8, will be zoned first for students from Ward 7 and secondarily for a sufficient number of students from Ward 8 to fill said school to capacity.

2. Polk-Rosenwald School will be used for grades 1-6 and will be zoned primarily for students from Wards 4 and 5 and secondarily for a sufficient number of students from Ward 9 to fill said school to capacity.

3. The remaining three schools, St. Francisville School (grades 1-12), Dawson School (grades 9-12), and Bains School (grades 1-8), shall be operated on an open attendance basis for the school year 1969-1970 only.

For the year 1969-1970, this will result in a substantial increase in integration in Tunica School and Polk School

as reflected on the projections prepared by the School Board and marked Exhibit "A" and previously filed in the record hereof, and will increase the number of integrated schools from one in 1968-1969 to three in 1969-1970.

IT IS THEREFORE ORDERED that this plan, as above set forth, for the school year 1969-1970, be implemented by the West Feliciana Parish School Board.

While the Board did not give a firm commitment as to its plan for future desegregation for the school year 1970-1971, this Court recognizes the necessity for such a commitment. Thus, the approval of the above plan is based upon the following conditions and order:

IT IS FURTHER ORDERED that within ninety days after the opening of the 1969-1970 school year, the West Feliciana Parish School Board present this Court with a firm commitment to bring about the total conversion of its entire school system to a unitary, non-discriminatory system by the commencement of the 1970-1971 school year. If such a firm commitment and plan is not forthcoming within said ninety day period, this Court will then assume that the Board approves the implementation of the HEW proposed plan for the 1970-1971 school year. This additional time is given in this case in view of what the Court considers to be special problems and circumstances existing in West Feliciana Parish and in view of the fact that the present Superintendent of Schools in that Parish has been in office for less than forty-five days and has not had the time or opportunity to seriously consider the possibilities for the 1970-1971 school year. It is expected that this time interval will enable the Board and the new Superintendent to review all possibilities for the complete disestablishment of a dual system of schools in West Feliciana Parish insofar as both teacher and student assignments is concerned and insofar as all school connected activities are concerned by the commencement of the 1970-1971 school year, and to present to this Court, within that time, a firm commitment to accom-

plish that end. Failing to do that, this Court will order the implementation of the HEW proposed plan for the commencement of the 1970-1971 school year.

IT IS FURTHER ORDERED that a copy of this order be served either personally or by mail upon all counsel of record in this case, and IT IS FURTHER ORDERED that such service upon counsel of record shall be deemed notice to the parties hereto.

Baton Rouge, Louisiana, July 25, 1969.

E. GORDON WEST
United States District Judge

APPENDIX D

PART 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

Civil Action Number 3253

SHARON LYNNE GEORGE, ET AL

VERSUS

C. WALTER DAVIS, PRESIDENT, EAST FELICIANA PARISH SCHOOL BOARD, ET AL

ORDER—RE: SCHOOL DESEGREGATION PLAN FOR EAST FELICIANA PARISH

Pursuant to this Court's order of July 11, 1969, the East Feliciana Parish School Board has presented to this Court a proposed plan for the desegregation of its public schools. HEW also submitted a proposed plan pursuant to this Court's order of June 9, 1969; and plaintiffs, through their counsel, have filed objections to the Board's proposed plan and urged the adoption of the HEW plan. Since every conceivable argument has been made, at one time or another, during the many hearings on this matter before this Court during the last four years, and since serious time limitations were imposed upon both the parties to this suit and this Court by the mandate of the Fifth Circuit Court of Appeals dated May 28, 1969, further hearings and oral arguments were considered unnecessary. Instead, the Court ordered each party to submit its plans, criticisms, objections and arguments in writing, after which the Court would take the matter under submission and render a decision by July 25, 1969, the deadline set by the Court of Appeals.

All of these plans, objections, and arguments have been carefully noted and considered, and this Court is of the opinion that, in the absence of a freedom of choice plan, which this Court sincerely believes to be legally and educationally sound, but which has been specifically rejected in

this case by the Fifth Circuit Court of Appeals, the plan proposed by the East Feliciana Parish School Board is, for many reasons, the next best thing, and will come closer to accomplishing what is sought to be accomplished by the Court of Appeals, while at the same time taking into consideration, to some extent at least, sound educational policies, administrative problems, and the economics of the situation, even though it is forced, by mandate, to practically eliminate completely the wishes and desires of the children and parents that the public schools are supposed to serve.

The Court finds as a fact that the drafters of the HEW proposed plan for this Parish completely and totally ignored all sound educational principles, administrative problems with which the Board would be faced under their proposed plan, and the economics of the situation, and chose instead to mechanically assign numbers instead of children to the various schools in the system. The HEW team, who were complete strangers to the East Feliciana area, and who had never been connected with school administration in a similar area, spent about six hours riding around looking at schools which were closed and locked, and then proceeded to claim some sort of expertise in the operation of the East Feliciana Parish School System. Their plan, in view of the complete lack of any consideration being given to local conditions, or to the cost of implementation, is indefensible. It deals only with numbers and not with students or realities. It provides for overcrowding certain school for the sole purpose of effectuating a predetermined percentage mixing of races. The entire plan submitted for this Parish by HEW evidences a complete and total lack of understanding on the part of its drafters. They offered no suggestion as to where the hundreds of thousands of dollars needed to implement their plan would come from. To implement their plan would require a complete reassignment of all school personnel, the establishment of a completely new transporta-

tion system, the relocation of school furniture, the building of laboratories in some schools and the dismantling of them in others, and a myriad of other things that simply could not feasibly be accomplished between now and the last of August, when school begins. The detailed objections to the HEW plan contained in the affidavit of M. N. Williams, Superintendent of Schools for East Feliciana Parish, attached hereto for reference, clearly set forth the indefensibility of the HEW plan. This appraisal was made by an expert in the field of school administration in East Feliciana Parish and must be given great weight. The objections to the School Board's plans, filed on behalf of plaintiffs, need no comment since they are not backed up by any reasoning whatsoever and were obviously prepared by someone who knew nothing whatsoever about the situation and who failed to give any consideration to the very real problems involved.

It being the opinion of this Court that the East Feliciana Parish School Board has acted in good faith in attempting to present a solution to the many problems involved, and it being the opinion of this Court that the plan proposed by the Board does, in fact, make substantial progress toward the immediate accomplishment of the things sought to be accomplished by the Court of Appeals, and it being the opinion of this Court that the implementation of the plan proposed by the Board will, within two or three years at the outside, bring about the complete desegregation of the entire school system, and it being the opinion of this Court that it would be unrealistic to require more of the Board and the people of East Feliciana Parish on such short notice, and lastly, it being the opinion of this Court that the plan proposed by the East Feliciana Parish School Board is in substantial compliance with both the orders of this Court and the mandate of the Fifth Circuit Court of Appeals:

It Is Ordered that the proposed plan for the operation of the public schools of East Feliciana Parish commencing

with the beginning of the 1969-1970 school year, filed herein by the East Feliciana Parish School Board on July 22, 1969, and made a part hereof by reference, and a copy of which is attached hereto, be, and it is hereby declared to be the plan under which said school system shall operate commencing with the beginning of the 1969-1970 school year, and,

IT IS FURTHER ORDERED that the East Feliciana Parish School Board implement said plan, in its entirety, at the commencement of the 1969-1970 school year.

IT IS FURTHER ORDERED that a copy of this order be served, either personally or by mail, on all counsel of record in this case, and IT IS FURTHER ORDERED that service of this order upon counsel shall be deemed to be notice to the parties to this suit.

Baton Rouge, Louisiana, July 25, 1969.

E. GORDON WEST
United States District Judge

STATE OF LOUISIANA
PARISH OF EAST FELICIANA

BEFORE ME, a Notary Public for East Feliciana Parish, Louisiana, personally appeared:

M. N. WILLIAMS

who, being duly sworn, deposed that:

He is Superintendent of Schools for East Feliciana Parish. He was commissioned by the East Feliciana Parish School Board to prepare an affidavit for submission to the United States District Court for the Eastern District of Louisiana, in compliance with an order of that court of July 11, 1969, in the matter entitled "Sharon Lynne George et al. versus C. Walter Davis, President, East Feliciana Parish School Board et al." Civil Action Number 3253.

On July 19, 1969 the East Feliciana Parish School Board, at a special meeting called for that purpose, at which meeting a quorum of the board was present and voted, approved for submission to the court the following PLAN FOR EFFECTUATION OF A UNITARY, NON-DISCRIMINATORY SCHOOL SYSTEM FOR EAST FELICIANA PARISH, LOUISIANA. The plan set forth details for its operation, and includes certain provisions from the "Desegregation Plan for East Feliciana Parish School District," previously filed with this court by the Department of Health, Education and Welfare.

Certain provisions of the latter plan, of H. E. W., have been omitted from the school board's plan, and others have been altered before insertion in the plan. Detailed reasons for all such deviations or omissions are set forth herein, immediately before the details of the board's own plan.

The plan of the school board, the critique of the H. E. W. plan, the provisions of the H. E. W. plan to which objections have been made, and detailed reasons for the objections, are as follows:

CRITIQUE OF H. E. W. PLAN, OBJECTIONS THERETO, AND REASONS FOR OBJECTIONS

General Objections to HEW Plan

On June 9, 1969, Judge West of the United States District Court ordered the East Feliciana Parish School Board in conjunction and cooperation with the experts of Health, Education and Welfare to prepare a new plan for the operation of the parish schools to become effective with the commencement of the 1969-70 school year. The order required that the new plan meet the standards set forth by the Fifth Circuit Court of Appeals in its decision of May 28, 1969, giving due consideration to the practical and administrative problems of each defendant board.

Mr. James Ford of Arkansas and Mr. Robert Reynolds of Texas were assigned by HEW to work with the staff of

the East Feliciana Parish School Board on its plan. These gentlemen met with the Board on June 24 at which time they informed the board of their educational background, authority, methods or procedure, etc. The Superintendent and staff were directed by the board to fully cooperate with the HEW team in the preparation of a plan. After board adjournment at four o'clock p. m., the team asked to be taken on a tour of the parish schools. The Superintendent explained that school personnel would not be on duty at this hour and consequently the schools would be locked. After an explanation by the team that its members could see enough by looking in the windows, the Superintendent visited the eleven schools in the parish with the HEW team, completing the visits at nine o'clock p. m. On the morning of June 25 the office personnel completed a copy of the enclosed questionnaire with the exception of the program of studies in each school which the team stated was insignificant and not needed. At 10:45 a. m., June 25, Mr. Ford and Mr. Reynolds arrived at the School Board office to pick up the completed questionnaires. They requested and were given a school tax district map and looked at transportation maps. A pupil location map was requested but was not available. At no time were there any discussions of possible plans or requests for information regarding practical and administrative problems of this particular school system. The team left the office at 12:15 p. m. after informing the Superintendent that the HEW plan would be sent to him by registered mail on or before July 3. The next contact with HEW came on June 30 when the Superintendent was notified to come to the new Post Office building in Baton Rouge at 2:00 p. m. on July 2 to pick up and hear an explanation of the HEW plan. Mr. Don Phares and Mr. Walter Felps, school board members, Mr. John Ward, board attorney, and Superintendent Williams met Mr. Reynolds and Mr. Ford at the appointed time and place and received the plan and an explanation of it.

The above detailed information of the workings of the HEW team in East Feliciana Parish may be of no consequence other than as a comparison with procedures of the teams in other parishes. Nevertheless, it is inconceivable that two men, admittedly unfamiliar with Louisiana school laws and the East Feliciana Parish system could devise a completely new and different school system after working the parish for six and one-half hours. This in no way is intended as a reflection on the abilities of the team members although their educational experiences and backgrounds were in school systems entirely different from East Feliciana. Mr. Ford's administrative experience is confined to an Arkansas system of 1000 students, approximately 20% of the students were negroes, most of whom were sent out of the district on a tuition basis until the formation of a unitary system. The East Feliciana system consists of 68% negro students and 63% negro teachers. Mr. Reynolds' administrative experience in elementary and secondary schools was in Austin, Texas as a junior high principal. In this urban system of 15% negro students where several all negro schools still exist and with segregated housing patterns typical of cities, school problems are quite different from those in rural East Feliciana. Fondest expectations under these circumstances were that the team would best utilize the facilities available within a workable administrative framework. This actually required very little educational expertise since the team's stated prime responsibility was to desegregate the system. All that could be done was to fill existing classrooms with a mixture of students of both races. These minimal expectations were formulated without giving due consideration to the emphasis placed by HEW on racial ratios in each school. Any resemblance of the HEW plan to the present school system is purely accidental. To put this plan into effect would mean a complete reassignment of all school personnel, the establishment of an entire new transportation system, the relocation of most of the school

furniture, the adjustment of blackboards, bathroom equipment, etc., to meet the needs of different age groups, almost complete redistribution of texts and library books, transfers of most student records and revisions of time schedules and programs of study. In addition to these physical changes the board and its professional staff are charged with educating and selling the public on the plan, the formulation of new objectives and philosophies to coincide with the makeup of each new school and many other tasks which require much more than the allotted thirty days. (1969-70 session begins August 25.)

The East Feliciana Parish school system consists of eleven schools. Two of these schools, West High and Jackson High, serve grades 1 - 12. Clinton High serves grades 7 - 12 and East High contains grades 9 - 12. Elementary schools consisting of grades 1 - 8 are Slaughter, Reiley, Spears, Eighth Ward, Norwood, and East Elementary. Clinton Elementary serves grades 1 - 6. All of these schools currently operate the first six grades as self-contained classrooms. All seventh and eighth grades are departmentalized or semi-departmentalized to serve as a transitional period between self-contained classrooms and departmentalized high schools. All high schools have established and operating four year programs. This organizational structure is the result of many years of study, research, and experience within this rural system and is based on sound educational principles. The teachers in the system have been selected, assigned and trained for this structure. The HEW plan totally disregards any organizational structure and proposes a hodge-podge of school organization. The only apparent consideration was to fill existing classrooms with a racial mixture of students.

Each of the schools in the system has been located so as to best serve the children of the parish in accordance with the "neighborhood school" concept. Consequently, the schools are a vital part of each community, serving not

only as the educational center but also as the social and cultural center. The HEW plan of restructuring the schools and dividing the students gives no consideration to this important value of the schools. When this is lost, it is reasonable to predict that it will be accompanied by the loss of public interest and support.

The HEW plan requires the use of most schools by students in grade levels other than those currently attending. The necessary conversion of classrooms and facilities along with the moving of equipment, texts and library books, etc., will require considerable time as well as creating an exorbitant financial burden. The plan also requires additional transportation. The East Feliciana Parish School Board does not have the necessary personnel to make this conversion in the limited time available nor does it have the financial resources the plan requires. It is estimated this plan would cost the school system an additional $250,000.00 to implement for the 1969-70 school year.

The HEW plan omitted any provision for classes for the Educable Mentally Retarded which has been an important port of our school program. The proposed restructuring of schools would seriously hinder this phase of the school program.

Specific Objections to the HEW Proposals

II. Recommendations

The school board staff was instructed to use a room capacity of 28 elementary students and 25 high school students per standard classroom. The HEW plan used a figure of 30 for elementary and 25 for high school. This discrepancy accounts for some of the difference in the staff's rating and the HEW rating. Further reasons for a discrepancy here are apparently because HEW did not take into account variations in size of classrooms and special purpose rooms.

II. *Special note*

A special note on page two of the plans calls for a division of the parish with the dividing line to be established by the school board so as to establish and maintain the approximate ratios reflected in the plan. Since the line to be drawn would in effect divide the school population of the entire parish, such a line would be immensely difficult to establish. With a shifting and changing population, this line would be impossible to maintain.

II. (1) *East High School to be grades 10-12*

A. Rejected

B. Reasons:

The East High School for grades 10-12 is a combination of the former Clinton High School with grades 6-12 and the former East High School with grades 9-12. In both of these schools the administrative structure was based on a four year high school program. The three-grade proposal will interrupt the continuity and damage the effectiveness of the high school program of studies. In addition to this change the course offerings of the schools differ to meet the needs of their respective student bodies. Many students will be unable to continue their planned program of studies, seriously hindering their educational careers. The HEW team rated the capacity of East High at 450 students and assigned 494. To obtain the number assigned the team used the 1968-69 attendance figures in grades 10-12. For the session 1969-70 the figures for grades 9-11 should have been used to estimate the size of the student body. Using figures for these grades, the actual enrollment for East High will be 585 students, which is 135 above the rated capacity. East High lacks the facilities to accommodate a senior high school of this size. A critical deficiency exists in the specialized areas such as science labs, shop areas, commerce departments, etc.

(2) *Clinton High School be grades 7 - 9*

A. Rejected

B. Reasons:

Clinton High School is a junior-senior high school consisting of grades 7-12. The school organization is based on preparing the 7th and 8th grades for a four year high school program. The proposed structure will make it impossible to continue this plan. Students for the school will come from East Elementary, Spears Elementary, Clinton Elementary, Reiley, Eighth Ward and Slaughter and remain from 1-3 years. The various school backgrounds and length of stay will make it extremely difficult for the school to analyze and meet the individual needs of the students during the course of a session. The board's rated capacity of the 30 year old plant is 325 students. The rating given by the HEW team was 504 and the assignment is for 535 students. Since the school has specialized facilities required for a high school, many rooms will not be fully utilized under the proposed restructuring. Most equipment must be moved as it is not adaptable to these grade levels.

II. (3) *Clinton Elementary School be grades 5 6*

A. Rejected

B. Reasons:

The Clinton Elementary School is serving as grades 1-6 elementary school. The school now contains equipment and furniture to meet the needs of students in those grades. The new proposal would require converting several classrooms to the needs of older children. Changes must be made in blackboard heights, bathroom fixtures, size of desks, and numerous other things. Programs of special services now being offered such as special education for mentally retarded, remedial reading, vocal and instrumental music could be seriously hampered. The educational soundness of isolating grades 5 and 6 is questioned.

II. (4) *East Elementary School to be grades 1-4*

A. Rejected

B. Reasons:

East Elementary School is now serving as a grades 1-8 school with facilities for special education for retarded children and a remedial reading program. This relatively new plant contains two classroom wings of 12 rooms each. One wing is designed for low elementary grades and one for grades 5-8. Fixtures, furniture and equipment in the upper elementary wing would have to be changed to meet the needs of the smaller children. The unnecessary conversion of a modern 1-8 grade plant is a needless waste of upper elementary facilities and the public's money. The time and expense involved in this conversion is discussed in the general objectives [sic].

II. (5) Eighth Ward Elementary School closed

A. Rejected

B. Reasons:

The Eighth Ward School is serving a heavily populated rural area as an elementary school for 317 students in grades 1-8 and as a community center. The plant consists of 15 classrooms, a cafetorium, a remedial reading room and a speech therapy room. The HEW team rated the plant in good condition. The team stated that the recommendations for closing this facility was based on their inability to find enough white students to adequately integrate the school. Closing this facility and assigning the students to the schools in Clinton would place an unnecessary burden on the Clinton schools.

II. (6) *Reiley Elementary School be grades 1-2*

A. Rejected

B. Reasons:

Reiley Elementary School is serving as an elementary school containing grades 1-8 and as a community center

for the attendance area. It is the cultural and social center of its patrons. The proposal to convert it to a school for grades 1 and 2 serving the students of two other areas will result in a complete loss of community interest and support for the school. Facilities would have to be altered to meet the needs of smaller children. Under the HEW plan, students in the Reiley School in grades 3, 4, and 5 will be bussed to Spears School, a distance of approximately 15 miles and the 6th, 7th, and 8th grades will be bussed to Slaughter, a distance of 17 miles. First and second graders are to be bussed to Reiley from Slaughter and Spears schools. Some of these students live as much as 25 miles from the Reiley School. All of the schools involved in this triple-pairing plan with Reiley are now serving their communities as grades 1-8 elementary schools. Under this proposal a child beginning school at Reiley would attend five different schools before completing high school. A family in the area could conceivably have each of their five children attending five different schools, being transported on 5 different buses, each leaving the home and returning at different times. The expense of this cross bussing is prohibitive. The 1-2 structure of the schools is completely educationally unsound.

The plan directs the school board to create an elementary zone for the students attending Reiley, Spears and Slaughter. The schools are located across the southern section of the parish. This section is the fastest growing area of the parish. A line established now to fully utilize the facilities available would require constant alterations so as to avoid overcrowding of facilities. Establishment of this line and the pairing of these three schools would require a transportation system routed in an East-West direction while the North-South line proposed in the *special note* on page 2 would require routing in a generally north-south direction within the districts created. This plan of bussing will minimize the possibility of combining routes

to serve both areas and result in additional expense for the transportation system.

II. (7) *Spears Elementary School be grades 3-5*

A. Rejected

B. Reasons:

The Spears Elementary School is serving its community as an elementary school for grades 1-8 and as a community center. The HEW proposal would convert it into a grades 3-5 school for the children previously attending Reiley, Spears, and Slaughter. The busing objection related in objections to Reiley also apply in this case. Changing to a grades 3-5 school would result in the loss of special facilities for both upper and lower grades now existent at the school and necessitate the conversion to use by students of different age groups. The time and expense of unnecessary conversion also applies here. The conversion and the resulting transfer of students would result in the loss of school spirit and community support. The educational soundness of a grades 3-5 structure is questioned.

II. (8) *Slaughter Elementary School be grades 6-8*

A. Rejected

B. Reasons:

The Slaughter Elementary School is a new elementary school for grades 1-8, scheduled for opening at the beginning of the 1969-1970 school year. The HEW plan will convert it into a grades 6-8 school for students formerly of Reiley, Spears, and Slaughter. This school was constructed as a result of a concentrated effort and at considerable expense to the citizens and taxpayers of the Slaughter tax district. Under the HEW plan the majority of students at the Slaughter School will come from other tax districts, and [illegible] of the students in Slaughter will be bussed to schools in other tax districts. Since

the children in Slaughter will be widely scattered, the school will lose its value as a community center, with the accompanying loss of community support. Objection to bussing in the objections to Reiley and Spears are applicable to this school. The necessary conversion of facilities and equipment to use by students of other grade levels must be made here in a plant not yet used.

H. (9) *West High School to grades 1-4 and 10-12*

A. Rejected

B. Reasons:

West High is now serving as a grade 1-12 school in Jackson. HEW's plan proposes to convert it to a school for grades 1-4 and 10-12 for all students residing in Jackson West High zone and students from the closed Norwood School. The school board's rated capacity for West High is 675 based on the board's plan to eliminate a poor facility for 125 students. HEW rated the plant capacity at 995 and assigned 950 students. As at East High these figures were taken from the 1968-69 school records for grades 10-12. If figures are taken from grades 9-11, the estimated enrollment will be 1,059 students on the campus of 8 acres. Facilities are completely inadequate for a student body of this size. A critical shortage exists in specialized facilities for high school such as science labs, shop area, etc. Although the campus is divided by a street, separating the high school and elementary plants, many facilities must be used in common such as lunchroom, library, gym, vocal and instrumental music. The proposed combination of lower grades and higher grades on this campus would not be desirable. Existing lunchroom facilities make it utterly impossible to accommodate a student body of this size. Students coming into the school in the upper grades would have their program of studies interrupted because of the differences in course offerings.

II. (10) *Jackson High School be grades 5-9*

A. Rejected

B. Reasons:

Jackson High School is presently serving as a grades 1-12 school in Jackson. The HEW proposal would require conversion to a grades 5-9 school for all students in the Jackson West High zone and the closed Norwood School. Existent facilities and equipment for the lower and upper grades will have to be relocated or converted for use by different grade levels. Specialized facilities for high school vocational subjects cannot be used by these grade levels. The 5-9 grade structure is incompatible with this system's educational philosophy and educational principles in general. It does not coincide with the parish plan for 4 year high school programs. The playground area is totally inadequate for a student body of this grade level and size.

II. (11) Norwood School closed.

A. Accepted.

III. Desegregation of Faculty and Other Staff

1. Rejected. The board rejects the ratio requirements for teachers and staff and contends that race should be no criteria for employment or reassignment.

2. Accepted.

3. Rejected. This section is so detailed and specific in terminology, yet so indistinct and obscure in meaning that attempted implementation as set forth would seriously hinder day by day operation of the schools by the local administrators.

IV. Transportation

A. Accepted.

V. School Construction and Site Selection

A. Accepted

VI. Majority to Minority Transfer Policy

A. Rejected

B. Reasons:

The board rejects this provision as written because it does not limit students to transfers only before the beginning of school. Under the proposal transfers could be made at any time during a school year. In addition the provision is not clearly worded. The board's alternative of this provision is set forth in Paragraph XI. of the board's plan.

VII. Attendance outside parish of Residence

A. Rejected in part

B. Reasons:

The board rejects this proposal as being unworkable and in fact unenforceable by the school board insofar as it applies to students transferring to schools outside the parish.

VIII. Suggestions for Plan Implementation

A. Rejected

B. Reasons:

It is submitted that these provisions are suggestions only, and not intended to be a part of the HEW "plan" itself. The HEW representatives clearly indicated their intention to leave "implementation" of the plan to the school representatives. All of the suggestions are clearly intended to be implemental in nature, or courses of action which in their opinion would assist in implementation. The orders of the court require only a plan, and leave implementation to the school board and school personnel. For these reasons, the board believes that the "suggestions" are inappropriate for, and beyond the scope of, any plan.

PLAN FOR EFFECTUATION OF A UNITARY, NON-DISCRIMINATORY SCHOOL SYSTEM FOR EAST FELICIANA PARISH, LOUISIANA

It will be noted that this plan sets forth provisions to effect substantial progress in elimination of all white and all-negro schools for the 1969-1970 school year. The plan is designed to not only eliminate all white and all-negro schools, but to completely integrate all schools in the parish by the beginning of the 1971 school year.

Initially, it should be noted, as is set forth in greater detail in the foregoing objections, that the plan submitted by HEW can immediately be seen to be infeasible because of the limited physical facilities available in the parish for operation of schools. Negroes outnumber whites at every grade level, and, if Negroes and whites are to attend the same schools, not only more classrooms, but considerably larger schools will be necessary. Sound educational and administrative principles dictate the necessity for new school facilities to achieve the purpose and the result ordered by the court.

Concerning the initial year 1969-1970, it should be noted that the plan calls for elimination of 3 formerly all Negro schools in the parish, and elimination of the only remaining all white school in the parish, by zoning. Another formerly all Negro school is being closed, in order to carry out the court's order. Thus 5 of the parish schools which formerly had no racial mixing of students will now be integrated to a substantial degree. Another 3 schools, all with predominantly white student enrollments, are expected to receive significantly greater numbers of Negro students as a combined result of the zoning and closing of other schools.

Finally, it should be noted that this plan is being submitted by the East Feliciana Parish School Board in order to comply with the orders of Court rendered previously in this matter. It is still the unanimous opinion of the board that, if it is necessary in the eyes of the courts to operate

the parish school system under a plan designed solely for the purpose of eliminating racial discrimination, the only plan which is conscionable and workable in accordance with recognized educational and administrative principles is the "freedom of choice" plan which the board has operated its schools under for the past two years. In addition, the board believes that there could be no fairer plan than freedom of choice, in that it gives every student, or every parent of a student, the right to choose the school which he desires, and the right for that student to attend that school and to obtain his education there. The East Feliciana Parish School Board firmly adheres to its belief that the only fair and workable school desegregation plan for its school system is freedom of choice.

However, for the reasons given in the foregoing criticism, the plan submitted to the court by HEW would lead to the educational and financial collapse of the school system of the parish. The HEW plan has been clearly stated to be the only alternative to a plan of forced mixing of schools, and freedom of choice has been specifically and unequivocally ruled out as an alternative.

Hence, the following plan is submitted, not in the belief that it is the best plan for the East Feliciana Parish School System, but in the belief that it is the only alternative to the destruction of the system which would result with attempted implementation of the HEW plan.

Details of Plan for 1969-70 School Year

I. All students in grades 1-8 residing within the following zones will attend the schools within their respective zones, each of which has been drawn to accommodate the approximate capacity of each school therein. Such students will not be allowed to attend schools outside the zones in which they reside, except as provided in the majority to minority clause of Paragraph XI. The zone will include all students residing within the following boundaries for each school area, respectively:

Bailey Elementary School Zone

Begin at the intersection of Louisiana Highway 958 with the south boundary of East Feliciana Parish, then follow Hwy 958 north to Hwy 959, then follow Hwy 959 east to a gravel road east of Hairstown, then north about one mile to a gravel spur road, then east to the end of the gravel spur, and along the section lines between 28 and 44 of T3S, R3E to the end of another gravel spur, and along this spur back to Hwy 959, and then to Kidd's Creek. Then along Kidd's Creek south to the south boundary of East Feliciana Parish, then along the parish line west to Hwy 958.

Slaughter Elementary School Zone

Begin at the intersection of Louisiana Highway 964 with the south boundary of East Feliciana Parish; then north along Hwy 964 to Hwy 955. Then northeast along Hwy 955 to Ethel, Louisiana. Then northeast along Hwy 19 to Redwood Creek, then south along Redwood Creek about a mile south of its intersection with Hwy 956, then east to a gravel road connecting Hwy 412 with Hwy 955, then south along the gravel road to Hwy 412, then south along the section lines between sections 2 and 3 and between sections 10 and 11 of T4S, R1E to the south boundary of East Feliciana Parish, then along the parish line west to Hwy 964.

Eighth Ward Elementary School Zone

Begin at the intersection of Hwy 10 with the east bound ary of East Feliciana Parish, then west along Hwy 10 to a gravel road at its intersection with the section line between section 72 and 74 of T2S, R3E, then west along the gravel road for about two miles to a gravel spur road, then to the end of the gravel spur and northwest to the intersection of the Beech Grove Road with Hwy 67, then northwest to the intersection of section 21 of T1S, R2E with Beech Grove Road, then northwest along Beech Grove Road to

Louisiana Highway 422, then west to Comite Creek, then north along Comite Creek to the north boundary of East Feliciana Parish, then east along the parish line to Amite River, then south along Amite River to Louisiana Highway 10.

Spears Elementary School Zone

Begin at the intersection of Highway 10 with Hwy 955, then south along Hwy 955 to Hwy 957; then to the intersection of Hwy 957 with the section line between sections 25 and 26 of T3S, R1E, then west to Redwood Creek, then north along Redwood Creek to Hwy 19, then north on Hwy 19 to its intersection with Carter's Creek, then north along Carter's Creek to Battle Road, then east along Battle Road to a gravel spur road in Battle, then along the gravel spur road to its end, then northeast to the intersection of Hwy 10 with Hwy 955.

II. Norwood Elementary School will be closed, and its former students will be absorbed by the school system according to the proposals set forth below.

III. Any student outside the zones described in Paragraph I, and any student in grades 9-12 within the zones has the option of open enrollment in any school outside the zones and serving his grade level.

IV. Students outside the zones, residing south of Highway 10 and east of the Range Line between R2E and R3E, Greensburg Land District, have the option of enrollment as in III above, with the additional option of attending Ridley Elementary School if it serves his grade level.

V. Students outside the zones, residing west of Comite River south of its intersection with Louisiana Highway 67, have the option of open enrollment as in III above, with the additional option of attending Spears Elementary School if it serves his grade level.

VI. A. Approximately two weeks prior to the scheduled opening date for parish schools, an open registration period shall be held at each school subject to open enrollment in the parish. Every student with the option of open enrollment shall be allowed to select the school which he prefers at such time. This pre-school registration period will not be available to children within the closed zones unless the majority to minority transfer provisions of Paragraph XI applies. A prominent notice of the open registration period, and the reasons therefor, shall be published in the local newspaper at least 3 days prior to the scheduled date for the registration period.

B. No preference shall be given to any student with the option of open enrollment for prior attendance at a school, and no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school, preference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the parish. Any such student whose choice is denied will be promptly notified in writing and given his choice of any school which he is eligible to attend in the parish, serving his grade level, where space is available.

VII. The transportation system shall be completely reexamined regularly by the superintendent, his staff, and the school board. Bus routes and the reassignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis. Buses for students not subject to zoning will be routed to the maximum extent feasible, in light of the geographic distribution of students, so as to serve each student choosing any school in the parish, which he is eligible to attend.

VIII. Faculty staff assignments for the 1969-1970 school year will be made in such a manner that, as far as feasible,

the racial composition of the faculty and staff will not indicate or suggest that the school is intended primarily for white or primarily for negro students. All schools within the parish will have integrated faculties for the 1969-70 year, and formerly all white or all negro faculties will have significant numbers of faculty members of the race previously unrepresented. Future employment of teachers, administrators, and staff members will be done without regard to race or color, and assignments of teachers in the future will be made likewise.

IX. Staff members who work directly with children, and members of professional staffs who work on the administrative level, will be hired, assigned, promoted, paid, demoted, dismissed and otherwise treated without regard to race, color, or national origin.

X. The size and location of new school buildings and additions to existing buildings can significantly affect desegregation now and in the future. All school construction, school consolidation, and site selection including the location of any temporary classrooms in this parish, including that planned for 1970 and years thereafter under this plan, shall be done in a manner which will prevent the recurrence of the dual school structure once this desegregation plan is implemented.

XI. Any student at any school in the parish in which students of his race are in a majority, shall be allowed to transfer to any other school in the parish serving his grade level and with space available where students of his race are in a minority. Such transfer must be made prior to the beginning of a school year, in accordance with the provisions of Paragraph VI A.

XII. If the school board grants a transfer into the parish of a student who resides outside the parish, for the student's attendance at a public school in the parish, it shall do so on a nondiscriminatory basis.

Additional Steps Toward a Completely Unitary System for the Years 1970-71 and 1971-72

The East Feliciana Parish School Board, through its Superintendent, will commence, as soon as possible considering the imminent opening of schools on August 25, 1969, to look for solutions to providing the physical facilities necessary to completely unitize this school system while at the same time providing a quality educational system for all children.

This study will include submitting to the property owning taxpayers of this parish a proposal asking for funds to build additional classrooms at existing facilities and/or construct new consolidated schools while converting existing facilities to more suitably uses.

The board's studies to date indicate that complete conversion to a unitary system, including faculty, can be accomplished more properly and smoothly over a three (3) year period commencing with the 1969-70 year, as outlined hereinabove, and completed with the 1971-72 year. This will also give the board time to hold the bond election proposed and to complete construction of new facilities.

The board proposed to make periodic reports to the Court during this year as to the results of the studies and the status of the various proposals.

The Court is, of course, aware of the impossibility of making a reasonable and proper study of possible solutions to the many practical administrative, educational and economic problems involved in such a conversion in the extremely short time we have been allowed. Even the HEW representatives readily admitted that this time schedule was "totally unrealistic". By instituting a plan which will "effectuate a transition to a unitary non-discriminatory system" over a three year period, the board will have time to make a thorough study and approach solution of these problems on an intelligent, reasonable basis from the stand-

point of education, administration, economics and the
fare of all children of the parish.

The following page shows the statistics required b
order of this court of July 11, 1969, regarding pu
racial makeup of the faculty and student body of
school in the parish, and expected racial makeup
implementation of the foregoing plan.

Racial Makeup of Faculty and Student Bodies of East Fe
Parish Schools for 1968-69 and Expected Racial Makeu
for 1969-70

	No. Students 1968-69			No. Teachers 1968-69			Expected No. Students 1969-70			Expe Tea 19
	W	N	T	W	N	T	W	N	T	W
Slaughter	165	0	165	8	0	8	150	35	185	
Bailey	0	235	235	0	10	10	20	235	255	2
Eighth Ward	0	317	317	0	11	11	27	348	375	2
Spears	0	250	250	0	12	12	33	302	335	2
Norwood	0	100	100	0	5	5				
Jackson High	736	11	747	37		37	39	710	749	37
West High	0	795	795	1	41	42	0	800	800	34
Clinton High	284	32	316	19	1	20	34	31	365	18
Clinton Elementary	247	29	276	13	0	13	171	32	225	10
East Elementary	0	442	442	1	24	25	0	442	442	1
East High	0	442	442	1	26	27	0	450	450	1

The above and foregoing plan, with accompanying
items to the previously submitted HEW plan, havin
approval by the East Feliciana Parish School Boa
July 10, 1969, is submitted in compliance with the
of the court of July 11, 1969, and with previous ord
this court and the Fifth Circuit of the United States

of Appeals, on behalf of the East Feliciana Parish School Board.

/s/ M. N. Williams
M. N. Williams
Superintendent of Schools
East Feliciana Parish,
Louisiana

Sworn to and subscribed before me, in Clinton, Louisiana, on July 21, 1969.

/s/ Robert A. Connell
Robert A. Connell,
Notary Public

APPENDIX E

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 13,229

HARRIETT D. NESBIT, ET AL., Appellants,

versus

THE STATESVILLE CITY BOARD OF EDUCATION, a public body corporate of Statesville, North Carolina, and A. D. KORNEGAY, Superintendent of Statesville City Public Schools, Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Woodrow W. Jones, Chief Judge.

And 4 Companion Cases

(Argued December 1, 1969. Decided December 2, 1969).

Before HAYNSWORTH, Chief Judge, SOBELOFF, BRYAN, WINTER, CRAVEN, and BUTZNER, Circuit Judges, sitting en banc.

PER CURIAM:

We consolidate these appeals for hearing and disposition in light of *Alexander* v. *Holmes County Board of Education*, —— U.S. —— (October 29, 1969). That recent decision of the Supreme Court teaches "[u]nder explicit holdings of this Court the obligation of every school district is to eliminate dual school systems at once and to operate now and hereafter only unitary schools." The clear mandate of the Court is immediacy. Further delays will not be tolerated in this circuit. No school district may continue to operate a dual system based on race. Each must function as a unitary system within which no person is to be excluded from any school on the basis of race.

We think that the urgency of the mandate of *Alexander* can be accomplished in the following manner and by the following time schedule, which we direct for these cases. Accordingly,

It is hereby ADJUDGED, ORDERED, and DECREED:

1. Each of the school districts shall submit to the district court a plan for unitary schools on or before December 8, 1969;

A. The plan for *Statesville* must provide for the elimination of the racial characteristics of Morningside School by pairing, zoning, or consolidation with Mulberry School;

B. In *Reidsville*, the district judge should select, with modifications if any, the pairing plan, on which the parties agreed in August 1968, the school board's zoning plan, or any other method that may be expected most effectively to provide for a unitary school system;

C. For *Durham*, the district judge may accept the Larson plan with modifications and refinements that will achieve a unitary system, or any other method that may be expected to work;

D. In *Halifax*, the plan must provide for the elimination of racial characteristics in the secondary schools either by pairing, zoning, or by any other method that may be expected to work;

E. In *Amherst*, the plan must eliminate the racial characteristics of the elementary schools either by pairing, zoning, or by any other method that may be expected to work including assignment of Negro children to schools attended by neighboring white children;

F. All plans must include provisions for the integration of the faculty so that the ration of Negro and white faculty members of each school shall be approximately the same as the ratio throughout the system. In determining the ratio, exceptions may be made for specialized faculty positions;

2. The plaintiffs and the Department of Health, Education, and Welfare may file responses to the plans on or before December 12, 1969;

3. Each district judge shall conduct a hearing on December 15, 1969 to enable him to determine the effectiveness of a proposed plan or its modification;

4. On or before December 19, 1969, each district judge shall enter an order approving a plan selected by him to achieve immediately a unitary school system;

5. The orders of the district judges shall be effective with respect to the school districts in North Carolina, which do not operate on a semester basis, at the end of the Christmas vacation, and in any event no later than December 31, 1969;

6. The orders of the district judges shall be effective with respect to the school districts in Virginia, which operate on a semester basis, at the end of the semester break, and in any event no later than January 31, 1970;

7. On December 19, 1969, there shall be transmitted to the Clerk's office of this court ten copies of the following papers in each case:

(a) The school board's plan;

(b) The responses to this plan;

(c) The district court order with a copy of the plan approved by him;

8. On or before December 22, 1969, any party may file (with ten copies) objections to the order of a district court. The district court's order, however, shall remain in full force and effect unless it is modified by an order of this court, which may be entered without further submission;

9. After a plan has been approved, the district court may hear additional objections or proposed amendments; pro-

vided, however, that the parties shall comply with the approved plan in all respects while the district court considers the suggested modifications. No amendment shall be effective before it has been approved by this court.

10. In *Halifax* and *Amherst*, the plaintiffs shall recover their costs and reasonable counsel fees, including reasonable out-of- pocket expenses, to be determined by the district judge. In *Statesville*, *Reidsville*, and *Durham*, the appellants shall recover their costs.

The judgments are vacated and the cases are remanded for further proceedings consistent with this order.

Let the mandate issue forthwith.

CLEMENT F. HAYNSWORTH, JR.,
Chief Judge, Fourth Circuit

SIMON E. SOBELOFF,
United States Circuit Judge

ALBERT V. BRYAN,
United States Circuit Judge

HARRISON L. WINTER,
United States Circuit Judge

J. BRAXTON CRAVEN, JR.,
United States Circuit Judge

JOHN D. BUTZNER, JR.,
United States Circuit Judge

APPENDIX F

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Nos. 28030 & 28042

UNITED STATES OF AMERICA, Plaintiff-Appellant,

versus

HINDS COUNTY SCHOOL BOARD, ET AL.,
Defendants-Appellees.

(Civil Action No. 4075(J))

And 24 Companion Cases

Appeals from the United States District Court for the Southern District of Mississippi

Before BELL, THORNBERRY, and MORGAN, Circuit Judges.

PER CURIAM:

These cases, consolidated for order, are here for disposition in light of the decision of the Supreme Court in *Alexander* v. *Holmes County Board of Education*, No. 632, dated October 29, 1969. They involve 30 school districts in the Southern District of Mississippi. Suits to disestablish the dual school system were brought against fourteen of the school districts by private litigants: Anguilla, Canton, Enterprise, Holly Bluff, Holmes, Leake, Madison, Meridian, North Pike, Quitman, Sharkey-Issaquena, Wilkinson, Yazoo City, and Yazoo County. The suits with respect to the other sixteen school districts were government initiated.

The scope of the problem of converting from dual to unitary school systems in these districts may be seen from the following tables which reflect racial composition.

GROUP I

System	White Students	Negro Students
Amite	1461	2582
Anguilla Line	214	906
Canton Municipal	1326	3672
Hinds	6438	7489
Holly Bluff	240	483
Holmes	913	5355
Kemper	793	2060
Madison	1238	3376
Natchez-Adams	4494	5927
Noxubee County	872	3573
Sharkey-Issaquena	630	2002
South Pike	1135	2156
Wilkinson	779	2757
Yazoo County	1071	2495

GROUP II

Enterprise	405	363
Franklin	1094	1075
Leake	2088	2224
North Pike	697	605
Quitman	1656	1490
Yazoo City	2014	2089

GROUP III

System	White Students	Negro Students
Columbia City	1538	896
Covington	1998	1629
Forrest	4195	1062
Lauderdale	3063	1858
Lawrence	1942	1277
Lincoln	1671	1018
Marion	2064	1564
Meridian	6418	4405
Neshoba	2045	877
Philadelphia	969	548

It is ordered, adjudged and decreed, effective immediately, that "the school districts here involved may no longer operate a dual system based on race or color" and each district is to operate henceforth, pursuant to the terms hereof, as a unitary school system within which no person is "effectively excluded from any school because of race or color." *Alexander* v. *Holmes County Board of Education*, supra.

To effectuate the conversion of these school systems to unitary school systems within the context of the order of the Supreme Court in *Alexander* v. *Holmes County Board of Education*, it is ordered, adjudged, and decreed that the permanent plans as distinguished from the interim plans prepared by the Office of Education, Department of Health, Education and Welfare, attached hereto and marked as Appendices 1 through 30 shall be immediately enforced as the plans of the respective systems subject to the following terms, conditions, and exceptions:

(1) The time between the date hereof and December 31, 1969 shall be utilized in arranging the transfer of faculty, transfer of equipment, supplies and libraries where necessary, the reconstitution of school bus routes where indicated, and in solving other logistical problems which may ensue in effectuating the attached plans. This activity shall commence immediately. The Office of Education plans will result in the transfer of thousands of school children and hundreds of faculty members to new schools. Many children will have new teachers after December 31, 1969. It will be necessary for final grades to be entered and for other records to be completed by faculty members and school administrators for the students for the partial school year involved prior to the transfers. The interim period between the date of this order and December 31, 1969 will also be utilized for this purpose.

(2) No later than December 31, 1969 the pupil attendance patterns and faculty assignments in each district shall comply with the respective plans.

(3) As to the South Pike school district (App. 1), the plan suggested by the Office of Education shall be fully complied with except as to pupil assignment. The present pupil assignment and attendance pattern will suffice until the further order of this court. This system has 1135 white students and 2156 Negro students. Each of its seven schools are presently integrated. We conclude that a unitary system has been established as to pupil assignment. The Office of Education plan in other respects will assure a completely unitary system.

(4) As to the Madison County system, the Office of Education plan (App. 2) is modified as follows: Subsections 4 through 8 of the Office of Education Recommended Plan for Student Desegregation 1969-70 are eliminated. In place of those subsections we substitute the geographic zoning arrangement for East Flora, Flora, Rosa Scott, Madison-Ridgeland, and Ridgeland Elementary set out in sections A.2 and A.3 (App. 2(b)) of the proposed plan of the Madison County Board of Education. All other provisions of the Office of Education plan regarding Madison County are to become effective pursuant to the terms of this order.

(5) The attendance plan submitted by the Wilkinson County Board of Education will be considered by the court as a modification of the Office of Education plan (App. 3) upon a showing through a pupil locator map of the contemplated racial characteristics of the schools for girls.

(6) The attendance plan submitted by the North Pike County Consolidated School District will be considered by the court as a modification of the Office of Education plan (App. 4) upon a showing through a pupil locator map of the contemplated racial characteristics of the Jones and Johnston Elementary schools.

(7) It appearing that the lack of buildings prevents the immediate implementation of the permanent plan of the Office of Education suggested for the Quitman Consoli-

dated school district, the pupil attendance interim plan of the Office of Education for this district is authorized for use during the remainder of this school term (App. 5). The permanent plan shall be effectuated commencing in September, 1970. This relief is appropriate in view of the similarity between the proposed attendance plan of the school district and that of the Office of Education.

It is ordered, adjudged and decreed that these respective plans shall remain in full force and effect until the further order of this court. They may be modified by the court through the following procedure. Honorable Dan M. Russell, Jr., United States District Judge for the Southern District of Mississippi, is hereby designated to receive suggested modifications to the plans. No suggested modification may be submitted to Judge Russell before March 1, 1970 and any such suggestion or request shall contemplate an effective date of September, 1970.

Judge Russell is directed to make full findings of fact with respect to any modification recommended or disapproved and these findings are to be referred to this court for its review. Pursuant to the terms of the order of the Supreme Court in *Alexander v. Holmes County Board of Education*, supra, no amendment or modification to any plan shall become effective without the order of this court.

This order is entered only after full consideration of the suggested plans of the Office of Education and those of the local school boards. It is apparent that in some instances the plans are cursory in nature. They were devised without pupil locator maps. They do not contain information as to geographical area, transportation routes or distances. Some have not considered zoning. The school board plans are almost all without statistical data as to race. It is entirely possible that more effective plans can be devised on a local level and that these will insure the simultaneous accomplishment of maximum education and unitary school systems. To this end, and as an imprimatur

of local consideration, it is suggested the school board sponsored requests for changes in plans show either Negro representation on school boards or prior consideration by a bi-racial advisory committee to the school board.

Nothing herein is intended to prevent the respective school boards and superintendents from seeking the further counsel and assistance of the Office of Education (HEW), or the assistance of the Mississippi State Department of Education, University Schools of Education in or out of Mississippi, or of others having expertise in the education field.

The motion of counsel in those cases instituted by private litigants for attorneys fees is held in abeyance for the present. The motion of the private litigants to require the filing of further plans by the Office of Education for use in the Hinds County, Holmes County and Meridian districts is denied.

Jurisdiction of these cases is retained in this court, pursuant to the aforesaid order of the Supreme Court, to insure prompt and faithful compliance with this order. The court also retains jurisdiction to modify or amend this order as may be necessary or desirable to the end that unitary school systems will be operated.

IT IS SO ORDERED.

This 7th day of November, 1969:

GRIFFIN B. BELL
Griffin B. Bell
United States Circuit Judge

HOMER THORNBERRY
Homer Thornberry
United States Circuit Judge

LEWIS R. MORGAN
Lewis R. Morgan
United States Circuit Judge

APPENDIX G

PART I

PRESENT RACIAL COMPOSITION OF STUDENT BODIES AND FACULTIES OF THE EAST FELICIANA PARISH SCHOOL SYSTEM *

		STUDENTS		FACULTY	
SCHOOLS	GRADES	WHITE	NEGRO	WHITE	NEGRO
Clinton Elementary	1-6	190	30	12	1
Clinton High	7-12	235	13	19	1
Slaughter Elementary	1-8	160	34	9	0
Jackson High	1-12	684	11	34	2
East Elementary	1-8	0	584	3	24
East High	9-12	0	522	3	24
Spears Elementary	1-8	1	258	1	11
Eighth Ward Elementary	1-8	4	322	1	14
Reiley Elementary	1-8	0	240	1	9
West High	1-12	0	922	2	39

* Statistics taken from answers to plaintiffs' interrogatories filed in district court on November 5, 1969.

APPENDIX G

PART II

PRESENT RACIAL COMPOSITION OF STUDENT BODIES AND FACULTIES OF THE WEST FELICIANA PARISH SCHOOL SYSTEM *

SCHOOLS	GRADES	STUDENTS		FACULTY	
		WHITE	NEGRO	WHITE	NEGRO
St. Francisville High School	1-12	571	83	35	2
Tunica	1-7	150	63	7	2
Baines	1-8	0	947	1	47
Dawson	9-12	0	436	0	27
Polk-Rosenwald	1-6	0	170	0	6

* Statistics taken from answers to plaintiffs' interrogatories filed with district court on November 7, 1969.

APPENDIX G

PART III

PRESENT RACIAL COMPOSITION OF STUDENT BODIES AND FACULTIES OF THE CONCORDIA PARISH SCHOOL SYSTEM *

		STUDENTS		FACULTY	
SCHOOLS	GRADES	WHITE	NEGRO	WHITE	NEGRO
Clayton Elementary	1-6	74	44	6	1
Ridgecrest Elementary	1-6	314	51	11	4
Monterey High	1-12	388	60	22	4
Vidalia Elementary	1-5	595	77	26	4
Vidalia Jr. High	6-8	355	52	15	4
Vidalia High	9-12	355	34	19	3
Concord High	1-12	0	487	5	26
Ferriday Elementary	1-6	586	125	27	6
Ferriday Jr. High	7-8	378	58	16	6
Ferriday High	9-12	579	64	27	6
E. Washington Elementary	1-6	0	1049	6	45
Sevier Jr. High	7-8	0	354	5	15
Sevier High	9-12	0	553	6	27

* Statistics taken from report filed with district court by school board, October 6, 1969.